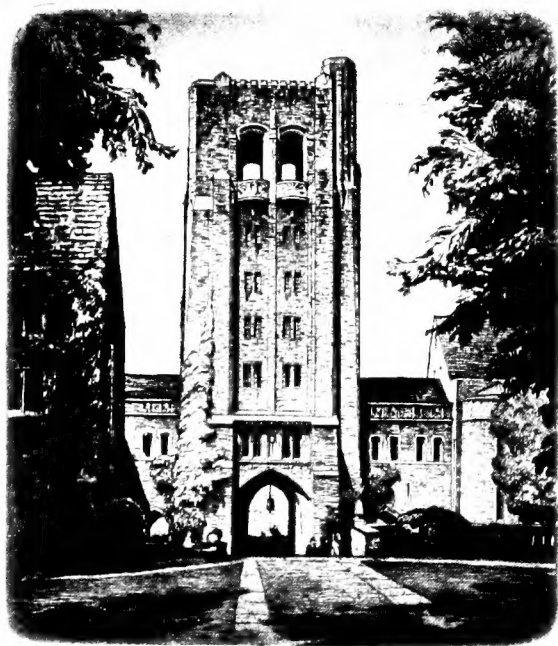




Cornell Law School Library

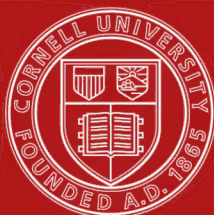
Cornell University Library
KFN5490.A3 1894

The statute railroad laws of New York /



3 1924 022 882 629

law



Cornell University Library

The original of this book is in
the Cornell University Library.

There are no known copyright restrictions in
the United States on the use of the text.

THE
STATUTE RAILROAD LAWS
OF
NEW YORK,

CONTAINING

THE GENERAL RAILROAD LAW, THE GENERAL CORPORATION LAW,
THE STOCK CORPORATION LAW, THE STATUTORY CON-
STRUCTION LAW, THE RAPID TRANSIT ACT,
THE CONDEMNATION LAW,

AND

THE GENERAL LAWS RELATING TO ELEVATED RAILROADS, STREET
SURFACE RAILROADS, MUNICIPAL AID BONDS, BONDS AND
CONTRACTS, THE CONSTRUCTION, OPERATION AND
MANAGEMENT OF RAILROADS, RAILWAY
APPLIANCES, TICKETS, BAGGAGE
AND MECHANICS' LIENS,

WITH NUMEROUS CITATIONS.

ALSO

THE GENERAL LAWS REGARDING TAXATION AND RECEIVERS, THE
CODE OF CIVIL PROCEDURE, PENAL CODE AND CODE OF
CRIMINAL PROCEDURE, PROVISIONS APPLICABLE
TO CORPORATIONS, FULLY ANNOTATED,

AND

THE INTERSTATE COMMERCE ACT,

TOGETHER WITH

*Notes of Judicial Decisions applicable to Railroads, Corporations, and Rapid Transit
Railroads, supported by Copious Citations from American and English
Authorities, and Tables showing what Laws the Consolidated
and Corporation Acts are based upon, and what
Laws were Repealed by these Acts, to
and including the year 1894.*

BY GEORGE A. BENHAM,
OF THE TROY BAR.

ALBANY, N. Y.:
W. C. LITTLE & CO.,
LAW BOOK PUBLISHERS AND BOOKSELLERS,
1894.

Inscribed to
Mr. GEORGE H. NORMAN, Jr.

PREFACE.

It has been the aim of the editor of this work to prepare a useful and convenient manual containing all the general railroad laws of New York and those co-ordinate therewith, which will be acceptable not only to the active practitioner but also to business men who may have occasion to refer to a book of this nature. In pursuance of this aim, the work has been adapted in so far as practicable, to the needs both of the busy lawyer and of the unprofessional user. The statute laws have been arranged in systematic order, and under appropriate heads, in substantially the same manner as they are found in the statute books. Instead of scattering the various sections of laws among a miscellaneous assortment of notes and references, the laws are placed in compact form with appropriate heading, and the notes are collected together in a separate form, and so arranged that their contents can be quickly ascertained. The tables showing what laws the general revision acts are based upon have been published in compact form so as to be readily accessible for comparison or cross reference without turning for them to the various pages upon which the revised sections of the general acts are given.

The press work was well under way before the second revision of 1892 occurred, and this necessitated the reprinting of a large portion of the first part of the work. Quite a number of unimportant laws, already printed in this work, were repealed by the legislature in or since the year 1892. A table showing the fact and date of such repeal is published at the beginning of the book. The laws substituted for those repealed are given herein.

Owing to the size of the work, and the large number of books of forms published, it was deemed inexpedient to append a set of forms. A complete set of forms for a work of this comprehensive nature would occupy a large amount of space which might, it is believed, well be devoted to more serviceable matter. Besides, it is doubtful if any except the shorter or more common forms would prove of much service except to practitioners chiefly

engaged in corporation practice. Comparatively few railroads are now being constructed in this state, and matters in litigation or otherwise relate chiefly to the incidents attending the operation and management of those already existing.

While this is ostensibly a railroad book, it is believed that, excepting the statutes upon certain specific subjects, as Banking or Insurance, it contains all the matter applicable to general corporations. The chapters on Taxation, Receivers, Code of Civil Procedure, Penal Code, and Code of Criminal Procedure, contain everything of a general nature applicable to private corporations of this state. The citations, also, of many of the American and English authorities will, it is hoped, render the work useful to the profession in other states.

The editor has no words of commendation of this work beyond this: That he has made a faithful and diligent effort to produce a useful reference manual upon a plan which he has by experience found most serviceable and labor saving. Upon the correctness of his judgment regarding the utility of this plan and the scope of the work, the profession must decide.

GEORGE A. BENHAM.

TROY, N. Y., *June, 1894.*

CONTENTS.

CHAPTER I.

THE RAILROAD LAW.

ARTICLE I.

ORGANIZATION, GENERAL POWERS, LOCATION.

Short title, 2.	Intersection of highways, additional lands for, 9.
Incorporation, 2.	Intersection of other railroads, 10.
Supplemental certificate, 3.	Change of route, grade or terminus, 11.
Additional powers conferred, 3.	Construction of part of line in another state, 12.
Entry upon land for purposes of survey, 4.	Two roads having the same location, 12.
Acquisition of real property, 4.	Tunnel railroads, 13.
Construction of road, 4.	Railroads in foreign countries, 15.
Intersection of streams, highways, plank-roads, turnpikes and canals, 4.	Additional corporate powers of such road, 15.
Intersection of other railroads, 4.	Location of principal office of such road, 16.
Buildings and stations, 4.	Individual, joint stock association, or other corporation may lay down and maintain railroad tracks in certain cases, 16.
Transportation of persons and property, 5.	When electric light and power corporation may become a railroad corporation, 17.
Time and manner of transportation, 5.	
Purchase of lands and stock in other states, 5.	
When corporate powers to cease, 5.	
Location of route, 5.	
Acquisition of title to real property, 7.	
Railroads through public lands, 9.	
Railroads through Indian lands, 9.	
Railroads through Chautauqua Assembly grounds, 9.	

ARTICLE II.

CONSTRUCTION, OPERATION AND MANAGEMENT.

Liability of corporation to employees of contractor, 19.	Locomotives must stop at grade crossings, 23.
Weight of rail, 19.	Rates of fare, 23.
Fences, farm-crossings and cattle-guards, 19.	Legislature may alter or reduce fare, 25.
Sign boards and flagmen at crossings, 21.	Penalty for excessive fare, 25.
Notice of starting trains; no preferences, 21.	Passengers refusing to pay fare may be ejected, 25.
Accommodation of connecting roads, 22.	Sleeping and parlor cars, 25.

Persons employed as drivers and conductors, 26.	Use of stoves or furnaces prohibited, 31.
Conductors and employees must wear badges, 26.	Canada thistles to be cut, 32.
Checks for baggage, 26.	Riding on platform; walking along track, 32.
Penalties for injuries to baggage, 27.	Corporations may establish ferries, 32.
Unclaimed freight and baggage, 27.	Certain railroads may cease operation in winter, 33.
Tickets and checks for connecting steamboats, 28.	Mails, 33.
Rights and liabilities as common carriers, 29.	Corporations must make annual report, 34.
Switches, warning signals, guard-posts, automatic couplers, automatic or other safety-brake, tools in passenger car, water, 30.	When conductors and brakemen may be policemen, 34.
Railroad commissioners may approve other safeguards, 31.	Requisites to exercise of powers of future railroad corporations, 35.

ARTICLE III.

CONSOLIDATION, LEASE, SALE AND REORGANIZATION.

Consolidation of corporations owning continuous lines, 36.	consolidated railroads partly in the state, 40.
Conditions, 37.	Powers of corporations of other states, 41.
Joint agreement; amount of capital stock, 37.	Lease of road, 42.
Agreement to be submitted to meeting of stockholders, 38.	Lessees of railroad may acquire stock therein, 43.
New corporation, 39.	Consolidation and lease of parallel lines prohibited, 43.
Creditors rights not to be impaired, 40.	Mortgagee may purchase at foreclosure sale, 44.
Assessment of property of new corporation, 40.	Certificate of stock may be issued after foreclosure in certain cases, 44.
Stock of municipal corporation, how represented, 40.	Liabilities of reorganized railroad corporations, 44.
Foreclosure of mortgages made by	

ARTICLE IV.

STREET SURFACE RAILROADS.

Street surface railroads; general provision, 45.	be given; sale of franchise at public auction, 50.
Consent of property owners and local authorities, 46.	Construction of road in street along or across where other road is built, 53.
Consent of local authorities; how procured, 46.	Proceedings if property owners do not consent, 54.
Condition upon which consent shall be given; sale of franchise at public auction, 47.	Percentage of gross receipts to be paid in cities or villages; report of officers, 55.
Condition upon which consent shall	Extension of route over rivers; terminus in other counties; when property

owners withhold consent, supreme court may appoint commissioners, 56.	Effect of dissolution of charter as to consents, 61.
Use of tracks of other roads, 57.	Corporate rights saved in case of failure to complete road; right to operate branches; conditions, former consents ratified; limitations, 62.
Repair of streets; rate of speed; removal of ice and snow, 57.	When sand may be used on tracks, 63.
Within what time road to be built, 58.	Road not to be constructed upon ground occupied by public buildings or in public parks, 63.
Motive power, 58.	Center-bearing rails prohibited, 63.
Rate of fare, 59.	Right to cross bridge substituted for a bridge crossed for five years, 64.
Construction of road in street where other road is built, 59.	
Abandonment of part of route, 60.	
Contracting corporations to carry for one fare; penalty, 61.	

ARTICLE V.

OTHER RAILROADS IN CITIES AND COUNTIES.

Application for railway commissioners, 65.	Commissioners to transfer plans, etc., 73.
Oath and bond of commissioners, 65.	Commissioners to file report; confirmation thereof, 73.
First meeting of commissioners, 66.	Pay of commissioners, 75.
Determination of necessity of railroad and route, 66.	Quorum; term of office; removal; vacancies in board of commissioners, 75.
Adoption of plans and terms upon which road shall be built, 67.	Abandonment or change of route; commissioners; their powers and proceedings, 75.
Appraisal of damages and deposit of money as security, 68.	Increased deposit, when and how acquired, 78b.
Shall prepare certificate of incorporation; proviso as to forfeiture, 70.	Trains to come to full stop, etc, 78b.
Organization, 70.	Gates, 78c.
Commissioners to deliver certificate; affidavit of directors, 71.	Penalty for violation of this article, 78c.
Powers, 71.	Sections to be printed and posted, 78c.
Crossing of horse railroad tracks, 72.	Extension of time, 78d.
Where route coincides with another route, 73.	

ARTICLE VI.

THE BOARD OF RAILROAD COMMISSIONERS.

Appointment and term of office of railroad commissioners, 78d.	General powers and duties of board, 78g.
Suspension from office, 78e.	Reports of railroad corporations, 78h.
Secretary and marshal of board, 78e.	Investigation of accidents, 78h.
Additional officers; their duties, 78e.	Recommendations of board where law has been violated, 78i.
Oath of office; eligibility of officers of board, 78f.	Recommendation of board when repairs or other changes are necessary, 78i.
Principal office and meetings of board, 78f.	
Quorum of board, 78g.	

Legal effect of recommendations and action of board, 78j.	Certified copies of papers filed to be evidence, 78l.
Corporations must furnish necessary information, 78j.	Acts prohibited, 78l.
Attendance of witnesses and their fees, 78j.	Salaries and expenses of members and officers of the board, 78m.
Fees to be charged and collected by the board, 78k.	Total annual expense to be borne by railroads, 78m.
Annual report of board, 78k.	Application of this article, 78n.
	Schedules of laws repealed, 78n.
	Notes of Judicial Decisions, 87.

CHAPTER II.

THE GENERAL AND STOCK CORPORATION LAWS.

I. THE GENERAL CORPORATION LAW.

Short title, 108	real property in this state upon judicial sales, 115.
Classification of corporations, 108.	Prohibition of banking powers, 115.
Definitions, 108.	Qualification of members as voters, 115.
Qualifications of incorporators, 109.	Proxies, 116.
Filing and recording certificates of incorporation, 110.	Challenges, 117.
Corporations of the same name prohibited, 110.	Effect of failure to elect directors, 117.
Amended and supplemental certificates, 110.	Mode of calling special election of directors, 118.
Lost and destroyed certificates, 111.	Mode of conducting special election of directors, 118.
Certificate and other papers as evidence, 111.	Qualification of voters and canvass of votes at special election, 118.
Prohibition of other than statutory powers, 111.	Powers of supreme court respecting elections 119.
Grant of general powers, 112.	Stay of proceedings in actions collusively brought, 119.
Limitation of amount of property of a non-stock corporation, 112.	Quorum of directors and powers of majority, 120.
Acquisition of additional real property, 113.	Directors as trustees in case of dissolution, 120.
Acquisition of property in other states, 113.	Forfeiture for non-user, 120.
Certificate of authority of a foreign corporation, 113-114.	Extension of corporate existence, 120.
Proof to be filed before granting certificate, 114.	Conflicting corporate laws, 122.
Acquisition of real property in this state by certain foreign corporations, 114.	Laws repealed, 122.
Acquisition by foreign corporations of	Saving clause, 122.
	Construction, 123.
	Law revived, 123.
	Schedule of laws repealed, 124.

II. THE STOCK CORPORATION LAW.

ARTICLE I.

GENERAL POWERS; REORGANIZATION.

Short title, and application of chapter, 133.	Contents of plan or agreement, 135.
Power to borrow money and mortgage property, 133.	Sale of property; possession of receiver and suits against him, 136.
Reorganization upon sale of corporate property and franchises, 134.	Assent of stockholders to plan of readjustment, 136.
	Combinations prohibited, 137.

ARTICLE II.

DIRECTORS AND OFFICERS; THEIR ELECTION DUTIES AND LIABILITIES

Directors, 137.	Transfers of stock to stockholders indebted to corporation, 138b.
Change of number of directors, 138.	Officers, 138b.
When acts of directors void, 138.	Inspectors and their oath, 138b.
Liability of directors for making unauthorized dividends, 138a.	Books to be kept, 138c.
Liability of directors for contracting unauthorized debts and over issue of bonds, 138a.	Annual report, 138d.
Liability of directors for loans to stockholders, 138a.	Liability of officers for false certificates, reports or public notices, 138d.
	Alteration or extension of business, 138e.

ARTICLE III.

STOCK, STOCKHOLDERS; THEIR RIGHTS AND LIABILITIES.

Issues and transfers of stock, 138f.	Payment by stockholders of mortgage debt pending foreclosure, 138k.
Subscriptions to stock, 138g.	Application to court to order issue of new in place of lost certificate of stock, 138k.
Consideration for issue of stock and bonds, 138g.	Order of court upon such application, 138l.
Time of payment of subscriptions to stock, 138g.	Financial statement to stockholders, 138l.
Increase or reduction of capital stock, 138h.	Exhibition of books by transfer agent of foreign corporation, 138m.
Notice of meeting to increase or reduce capital stock, 138h.	Liabilities of stockholders, 138m.
Conduct of such meeting; certificate of increase or reduction, 138i.	Limitation of stockholder's liability, 138n.
Preferred and common stock, 138j.	
Prohibited transfers to officers or stockholders, 138j.	

III. THE STATUTORY CONSTRUCTION LAW.

Short title; extent of application, 138p.	Lunacy; idiocy, 138q.
Property, 138q.	Gender; number; tense, 138q.
Real property, 138q.	Heretofore; hereafter; now, 138q.
Personal property, 138q.	Last; preceding; next; following, 138r.
Person, 138q.	Folio, 138r.
Judge, 138q.	Writing; signature, 138r.

Seal, 138r.	Civil and Criminal Codes, 138v.
Oath; affidavit; swear, 138r.	Laws of England and of the Colony of New York, 138v.
Acknowledge; acknowledgment, 138r.	Limiting the effect of repealing statutes, 138v.
Bonds; undertaking, 138s.	Existing laws included in revision not to be construed as new enactments, 138v.
Choose; elect; appoint, 138s.	Effect of revision upon laws passed at same session or before revision takes effect, 138w.
Board composed of one person, 138s.	Alterations of titles and head notes, 138w.
Meeting; quorum; powers of majority, 138s.	Laws repealed, 138w.
Service of notice upon board or body, 138t.	Time of taking effect, 138w.
County clerk; register, 138t.	Schedule of laws repealed, 138x.
Village, 138t.	Notes of Decisions upon Corporations, 139.
State, territory, 138t.	
Public holiday; half-holiday, 138t.	
Year, 138t.	
Month, 138u.	
Day; mode of computing days; night-time, 138u.	
Standard time, 138u.	

CHAPTER III.

THE RAPID TRANSIT ACT.

Commissioners of rapid transit, how appointed and constituted. Vacancies, how filled, 153.	Detailed plans; subways; interference with other structures; expenses, 158.
Oath of commissioners; oaths to be filed, 153.	Sale of franchises at auction; notice of terms and conditions, 159.
First meeting of board; by-laws, rules, record of proceedings to be kept, 154.	Commissioners to supervise construction; deposits; bids void unless corporation organized; resale, 159.
Commissioners to determine necessity of railroad and general plan of construction, 154.	When roads to be constructed; extensions; sale of franchises on forfeiture; distribution of proceeds, 160.
Location of routes; consents to be obtained; proceedings to condemn land; parks excepted, 155.	Reorganization of corporation; amount of stocks and bonds; tariffs; rejection of bids; resale; conditions; duration of franchise, 161.
Tunnels under parks, etc.; elevated roads forbidden in certain places, 155-156.	Resale of franchises on expiration of term; conditions; who may purchase, 162.
Plans to be approved by common council; consents to be obtained, 156.	Board may employ attorneys, engineers, etc., 162.
Consents of property owners; value of property; commissioners to condemn land, 157.	Appropriation of money; application to court therefor; audit and payment; issue of revenue bonds, 162-163.
Appointment of commissioners by court; their determination and report, 158.	Expenses, how repaid; terms of sale of franchises, compensation of commissioners, 164.

- Twenty-five persons to organize corporation; articles to be approved, acknowledged and filed, 164.
- Stock subscription books; to be fifty subscribers; percentages to be paid in cash; preferences, 165.
- Thirteen directors to be chosen; tenure of office; by-laws, 165.
- Record of proceedings to be kept; certificate thereof; repayment of deposits to corporations and to purchasers of franchises, 166.
- Plans, but not route, may be changed; certificate and amount of change to be filed, 167.
- Place of taxation of corporation, 168.
- Directors to manage affairs of corporation; vacancies, how filled; books to be exhibited, 168.
- Directors may require payment of subscriptions in such installments as they deem proper, 168.
- Stockholders personally liable to extent of their stock, and to laborers; action therefor to be preceded by notice; recovery over against corporation, 168.
- Stocks, how transferred, 169.
- Capital, how increased or reduced; stockholders to approve; statement to be approved, attested and filed, 169.
- Executor, trustee or pledgee holding stock not liable as stockholders; pledgors and owners liable, 169-170.
- Corporation liable for debts of laborers against contractor; limitation of actions, 170.
- Corporation may hold necessary real estate; how acquired; proceedings on disagreement with owners, 170-171.
- Corporations formed under this act shall have power: 171-174.
1. To take and hold voluntary grants, or necessary real and personal property, 171.
 2. To purchase and hold property necessary to construction and operation of road, 171.
 3. To cross and unite with other roads. Commissioners to fix compensation, crossings and connections, in case of disagreement, 171.
 4. To transport persons and property by motor other than animal power, 172.
 5. To construct and operate railroads in and underneath streets, to excavate; must restore streets; use of parks, etc., limited, 173.
 6. To borrow money and issue bonds therefor, 173.
- Employees must wear badges, 173.
- Corporation must carry mails; compensation; must furnish extra. or fast mail train; compensation, 173.
- Ejection of passenger refusing to pay fare, 174.
- Trains to be run on schedule time; passengers and freight to be transported and discharged at reasonable times and places, at legal rates, 174.
- Intoxication of conductor or engineer a misdemeanor, 174.
- Willful injury to property a misdemeanor; and offender liable for damages, 174.
- Legislature may dissolve corporation, 175.
- Railroads may connect with other routes and ferries, and extend facilities; Battery Park excepted; conditions and compensation, 175.
- Certificate in regard to connections, etc., to be attested and recorded; powers thereupon secured, 175.
- Consents of authorities and property owners to be obtained before connecting routes; disagreements, how settled, 176.
- Corporations may remove surface roads, must restore same and pay damages occasioned; not to use tracks of horse railways, 176-177.
- Construction of this act; does not affect L. 1875, c. 606, or art. 5 of ch. 565, L. 1890, except, etc.; not to impair certain rights of corporations, etc., nor affect certain acts, except, etc., 177-178.

No surface railroads to be constructed in New York city under this act, 178.	Dues from corporations, 179.
Repeal of inconsistent acts, 178.	Definition of corporations; right to sue and be sued, 179.
When to take effect, 178.	Notes of Decisions applicable to Rapid Transit Railroads, 180.
The authority for the passage of the general railroad acts, 178-179.	

CHAPTER IV.

PROCEEDINGS FOR THE CONDEMNATION OF REAL PROPERTY.

TITLE I.

Condemnation law, 190.	Offer to purchase by plaintiff; notice of acceptance of offer; costs and allowances, 196.
Terms used, defined, 190.	Compensation awarded, etc.; to be docketed as judgment; delivery of possession; issue of writ of assistance, 197.
Title to real estate, how acquired, 190.	Abandonment of proceedings by plaintiff, 198.
Petition to supreme court; petition what to contain, 190-191.	Appeal from final order; stay of proceedings, 198.
Notice of presentation of petition; service of petition and notice, 192.	Appeal from judgment in favor of defendant, 198-199.
Service, how made, 192.	New appraisal, 199.
Duty of general guardian, committee or trustee; court when to appoint guardian <i>ad litem</i> ; when attorney for defendant, 192.	Adverse and conflicting claims to money, 199.
Appearance of parties; service of papers, 193.	Power of court to prevent disturbance of possession, 199-200.
Answer to petition, 193.	Entry upon the use of property after answer has been interposed, 200.
Verification of petition and answer, 193.	Notice of pendency of proceedings; effect thereof; duty of county-clerk, 200-201.
Trial of issues and decision thereon, 193.	Power of court to make all necessary orders, etc., 201.
Provisions applicable, 194.	Repeal, 201.
Judgment, entry of; in favor of plaintiff; commissioners of appraisal, appointment of, 194.	Title, when to take effect, 201-202.
Duty of commissioners; report; compensation, 194.	
Confirmation of report; rehearing before commissioners; final order; deposit of money deemed payment, 195.	

TITLE II.

PROCEEDINGS FOR THE SALE OF CORPORATE REAL PROPERTY.

Proceedings on application to sell, mortgage, etc., property, 202.	Notice to creditors on application of insolvent corporation, etc., 203.
Petition to court; petition, what to contain; verification, 202-203.	Service of notices, 203-204.
Hearing of application, 203.	Power of court to make all necessary orders, 204.
Court may grant application; appearance on hearing, 203.	Title, when to take effect, 204.

CHAPTER V.

PROVISIONS IN REGARD TO THE ORGANIZATION AND MANAGEMENT OF RAILROADS.

The charter of railroads may be altered, suspended or repealed, 205.	Directors may change in certain cases the time for holding elections, 206.
Notice by publication of application to alter, amend or extend charter, 205.	Directors of corporation to appoint-- president, secretary and other officers, 207.
When company may assume another corporate name, 206.	Act of incorporation must be pleaded, 207.
When majority of directors is sufficient to constitute a quorum, 206.	When corporate existence must be proved, 207.

CHAPTER VI.

PROVISIONS RELATING TO ELEVATED RAILROADS.

Elevated railroads in cities, abandonment of part of route, 208.	Broadway, Fifth and Fourth avenues, and in parks, etc., 211.
Hours of labor upon elevated and surface street railroads, 209.	Elevated or steam railroads not to be built in Washington street, Brooklyn, except, etc., 211.
Railroads in New York city, when may be constructed in streets, 210.	Intoxication of railroad employees, 211.
Elevated railroads forbidden in certain streets in New York city, 210.	Improvement of elevated railroad structures in New York city, 211.
The same; not permitted in parts of	

CHAPTER VII.

STREET SURFACE RAILROADS.

Restrictions in the Constitution, consent of property owners to be first obtained, 212.	must provide and use hose bridges, 217.
Street railroads, corporate existence and powers of certain, continued 213.	Railroads in streets and avenues of New York city, 218.
Form of annual report of horse railroad companies, 213.	Street railroads in Buffalo and rates, and additional rates of fare for children, 218.
Obstruction of railway travel in cities by processions and parades forbidden, 216,	Street railroads forbidden in parks in the city of Buffalo, 219.
Use of salt on railroad track, when permitted, 217.	Rates of fare on street railroads in Buffalo, 219.
Processions not to interfere with railway travel in New York city, 217.	Brooklyn, use of steam and surface railroads upon Atlantic avenue forbidden, after elevated railroad built, etc., except, etc., 221.
Railway companies in New York city	

CHAPTER VIII.

MUNICIPAL BONDS ISSUED IN AID OF RAILROADS.

- | | |
|--|--|
| <p>No municipal aid or credit to be given toward the construction of railroads, 222.</p> <p>Renewal of municipal aid bonds, 222.</p> <p>The same, 224.</p> <p>Payment and refunding of municipal aid bonds, 225.</p> <p>Issue of bonds in place of those lost or destroyed, 228.</p> <p>Railroad commissioners of towns to present bonds paid, with account thereof; and to reinvest balance in their hands, 228.</p> <p>Sale of stock and bonds of bankrupt railroads by municipal corporations holding the same; disposition of proceeds; 229.</p> <p>Municipal corporations may pay their railroad bonds with railroad stock and bonds, and exchange railroad stock for their own bonds, 231.</p> <p>Payment of municipal aid bonds, 232.</p> | <p>Provisions relating to railroad stock and bonds held by municipal corporations, 234a-234e.</p> <p>Municipal taxes of railroads payable to county treasurer, 234a.</p> <p>Abolition of office of railroad commissioners, 234a.</p> <p>Appointment of railroad commissioners, 234b.</p> <p>Oath and undertaking of commissioners, 234b.</p> <p>Exchange or sale of railroad stock and bonds, 234b.</p> <p>Annual report of commissioners and payment of bonds, 234c.</p> <p>Accounts and loans by commissioners, 234d.</p> <p>Reissue of lost or destroyed bonds, 234d.</p> <p>Payment of judgments against municipal corporations, 234e.</p> |
|--|--|

CHAPTER IX.

PROVISIONS RELATING TO BONDS, CONTRACTS, PAYMENT OF WAGES AND FARES.

- | | |
|--|---|
| <p>Conversion of bonds into stock in certain cases where tracks are relaid, 235.</p> <p>Railroad bonds; how made non-negotiable by indorsement, 235.</p> <p>Railroad bonds may be transferred by indorsement in blank, 236.</p> <p>Change of gauge of railroads, and provision for increase of floating and bonded indebtedness, 237.</p> <p>Railroad mortgages of real and personal property need not be filed as chattel mortgages, 237.</p> | <p>Contracts for conditional sale of personal property on credit to be filed, 237.</p> <p>The same; not applicable to contracts which have been or must be recorded, 238.</p> <p>Contracts for lease or conditional sale of equipment and rolling stock to be filed, 239.</p> <p>Railroad companies must pay employees in cash, 239.</p> <p>Employees of certain railroads to be paid weekly, 240.</p> <p>Payment of fares upon railroads, 241.</p> |
|--|---|

CHAPTER X.

RAILWAY APPLIANCES.

Railroad commissioners may compel the lighting and ventilation of tunnels, 243.	Prevention of fires in forest lands, 246.
Automatic car couplers regulated, 245.	Lights on swing bridges across the Hudson river, 247.

PART SECOND.

CHAPTER I.

LOCATION OF TRACKS; TITLE TO CERTAIN LANDS; CANAL, ELECTRIC LIGHT AND PLANK-ROAD COMPANIES MAY LAY TRACKS.

Streets and highways may be laid across railroads; duty of corporation; penalty, 249	lands not affected by railroad privileges, 252.
When commissioners may consent to construction of railroad across public highways; duty of corporation, 250.	Maps to be filed where railroads constructed near or across canals, 252.
Sales and exchanges of forest lands, 250.	Corporations owning canals may construct and operate railroads, 253.
Title to salt lands; how acquired, 252	Electric light and power companies may construct and operate railroads, 253-254.
Title of the United States to certain	Plank-road and turnpike companies authorized to lay down rails, 254.

CHAPTER II.

RAILWAY TICKETS AND BAGGAGE.

Railroad companies to make annual statements of rates of fare to be charged immigrants and second class passengers, 255.	Restrictions against soliciting immigrants as passengers before landing in New York city, 260.
Immigrant tickets; how endorsed, 256.	Sales of passenger tickets at excessive rates; how punished, 261.
Rate of fare for transportation of immigrants; immigrants to be furnished with seats, etc., 257.	Sleeping car tickets; how indorsed, 261.
Penalty for violation of the foregoing provisions, 257.	Free passes on railroads, 261.
Proceedings on the arrest of an offender, 258.	Description of unclaimed trunks and baggage to be entered in a book, 262.
Sale of immigrant tickets in the city of New York; how regulated, 258.	Description of property to be made and published, 262.
Proceedings upon violation of the foregoing provisions, 259.	If property not claimed for sixty days, to be opened and inventory to be made, and sold at public auction, 262-263.
Penalty for violation of foregoing provisions, 260.	Expense to be a lien upon the property, 263.
	Penalty, 263.

CHAPTER III.

FURTHER PROVISIONS RELATING TO THE OPERATION OF
RAILROADS; RIGHTS AND DUTIES OF EMPLOYEES.

Superintendent of certain railroads authorized to seize milk cans, 264.	Corporations not to use "pay envelopes," or post notices to influence or intimidate voters, 268.
Further provisions in regard to milk cans, 264.	Provisions for the preservation of game, 269.
Persons of intemperate habits to be refused employment by railroad companies, etc., 265.	Prevention of accidents to children, 270.
Character of oils used in cars, 266.	No railroads to cross rural cemeteries, 270-271.
Prevention of contagious diseases, 266.	Adjustment of grievances between employer and employees, 271.
Prevention of contagious diseases of animals, 267.	Interchange of passengers and freight in certain cases, 271-272.
The tramp act, 267.	Amendment to Rapid Transit Act, 272-274.
Employees of corporations may cease work to vote without loss of pay, 268.	

CHAPTER IV.

THE MECHANIC'S LIEN LAW APPLICABLE TO RAILROADS

Lien upon track and appurtenances, 275.	Liens: how discharged, 276.
Notice to be filed, 275.	Personal liability of stockholders, etc., 277.
Evidence on trial, 276.	The mechanic's lien law applicable to railroad bridges and trestle work; time to file extended, 277-278.
Action to enforce lien, 276.	
Lien to continue one year, 276.	
Priority of liens, 276.	

CHAPTER V.

TAXATION OF CORPORATIONS.

Payment of school taxes by railroad companies, 279.	The General Act for the taxation of corporations, 284-294.
Valuation of railroad property in school districts; how apportioned, etc., 280-281.	Collection of state taxes from delinquent corporations, 294-295.
Place of assessment of certain personal property, 282.	Taxation of corporations upon organization, 295-296.
Payment by railroad companies of commutation money for highway labor, 282.	Railroad companies are subject to taxation, 296a.
Payment of taxes by railroad companies, 282-284.	Definition of word "land," 296b.
	Definition of "personal estate," 296c.
	Taxation of capital stock of corporations, 296c.

The same, 296c.	Highway taxes, 296i.
Corporation stock not taxed against individual owners, 296d.	Unpaid taxes on vacant lands, 296j.
Where real estate of corporations is assessable, 296d.	Collection of taxes, 296k.
Personal estate of company, where assessable, 296d.	Taxes on telegraph lines, 296k-296m.
Property, how to be estimated and assessed, 296e.	Assessment and collection of expenses of placing electrical conductors underground, 296m-296o.
Certain amended sections of tax law repealed, 296e.	Title of corporations, 296o.
General provisions for the assessment of taxes on corporations, and the collection thereof, 296e-296i.	Review of assessment by certiorari, 296o.
	Application to reduce valuation, 296p.
	Taxable transfers of property, 296p-296r.

CHAPTER VI.

RECEIVERS OF CORPORATIONS.

Receivers must report to attorney-general, 297.	Dissolution of corporation by legislature; suit by attorney-general, 302-307.
Compelling receiver to report, 297.	Wages of employees to have preference over other payments by receivers, 307.
Motion by attorney general to remove receiver, 298.	Provisions of the Revised Statutes applicable to receivers, 308-314.
Notices of motion, etc., to be served upon attorney-general, 298.	Protection against illegal transfers and agreements, 315.
Application of this act, 299.	Punishment of directors for neglect of duty, 315-316.
Appointment, powers and duties of receivers, 299-302.	
Transfer of property to receivers, etc., 302.	

CHAPTER VII.

THE CODE OF CIVIL PROCEDURE.

PROVISIONS APPLICABLE TO CORPORATIONS.

I. ACTIONS BY A CORPORATION AND AGAINST A CORPORATION TO RECOVER DAMAGES OR PROPERTY.

SECTION:	SECTION:
1775. Complaint in actions by or against corporations, 320.	1778. Action against a corporation on a note, etc., 321.
1776. When proof of corporate existence unnecessary, 320.	1779. When foreign corporations may sue, 321.
1777. Misnomer, when waived, 320.	1780. When foreign corporation may be sued, 321.

II. JUDICIAL SUPERVISION OF A CORPORATION, AND THE OFFICERS AND MEMBERS THEREOF.

SECTION:	SECTION:
1781. Actions against directors, etc., of a corporation for misconduct, 322.	1783. This article, how construed, 323.
1782. By whom actions to be brought, 322.	2469. Receiver of personal property, 323.
	3320. Receiver's commission, 323.

III. ACTIONS TO PROCURE THE DISSOLUTION OF A CORPORATION, AND ACTIONS TO ENFORCE THE INDIVIDUAL LIABILITY OF THE OFFICERS OR MEMBERS OF A CORPORATION WITH OR WITHOUT A DISSOLUTION THEREOF.

1784. Action by a judgment creditor for sequestration, etc., 323.	1790. Making stockholders, etc., parties, 326.
1785. Action to dissolve a corporation, 324.	1791. When separate action may be brought against them, 326.
1786. Id.; by whom to be brought, 324.	1792. Proceedings in either action, 327.
1787. Temporary injunction, 325.	1793. Judgment; property of corporation to be distributed, 327.
1788. Receiver may be appointed, permanent and temporary receiver, etc., powers of temporary receiver, 325.	1794. Id.; stock subscriptions to be recorded, 327.
1789. Additional powers and duties may be conferred on temporary receivers, 326.	1795. Id.; as to liabilities of directors and stockholders, 327.
	1796. Effect of this article limited, 327.

IV. ACTION BY THE PEOPLE TO ANNUL A CORPORATION.

1797. Action by the attorney-general when legislature directs, 328.	1800. Action triable by a jury, 329.
1798. Id., by leave of court, 328.	1801. Judgment, 329.
1799. Leave, when and how granted, 329.	1802. Injunction may issue, 329.
	1803. Copy of judgment roll to be filed and published, 330.

V. PROVISIONS APPLICABLE TO TWO OR MORE OF THE ACTIONS SPECIFIED IN THIS TITLE.

1804. Certain corporations excepted from certain articles of this title, 330.	corporations in certain cases, 332.
1805. Officers and agents may be compelled to testify, 330.	1810. Id.; of order appointing receiver in certain cases, 332.
1806. Injunctions staying actions by creditors, 330.	1811. Id.; of judicial suspension or removal of an officer, 333.
1807. Creditors may be brought in, 331.	1812. Application of the last three sections, 333.
1808. When attorney-general must bring action, 331.	1813. In action against stockholders, misnomer, etc., not available, 333.
1809. Requisites of injunction against	

VI. PROCEEDINGS FOR THE VOLUNTARY DISSOLUTION OF A CORPORATION.

2419. When majority of directors, etc., may petition for dissolution, 334.	2420. Id.; when they are equally divided, 334.
	2421. Contents of petition, 334.

SECTION:

2422. Affidavits to be annexed, 335.
 2423. Presentation of petition, etc.,
 order to show cause, 335.
 2424. Order to be published, 336.
 2425. Id.; to be served on creditors
 and stockholders, 337.
 2426. Hearing, 337.

SECTION:

2427. Id.; original papers may be used,
 337.
 2428. Application for final order 337.
 2429. Final order, 338.
 2430. Certain sales, etc., void, 338.
 2431. Certain corporations excepted
 from this title, 338.

VII. MISCELLANEOUS PROVISIONS OF THE CODE OF CIVIL PROCEDURE REGU-
 LATING THE CONDUCT OF ACTIONS AGAINST A CORPORATION.

431. Subd. 3, personal service of a
 summons on a domestic cor-
 poration, how made, 339.
 432. Id.; upon a foreign corporation,
 339.
 438. Cases in which the service of a
 summons by publication, etc.,
 may be ordered, 340.
 2865. Actions by and against officers,
 etc., and by executors, etc.,
 341.
 2879. Service of summons in a justice's
 court upon the company, 341.
 2880. Id.; special provisions in regard
 to railroad corporations, 341.
 2881. Id.; relating to express com-
 panies, 341.
 525. Subd. 1, verification of pleading,
 how and by whom made, 342.
 610. Service of injunction upon the
 corporation, 342.
 624. Damages sustained when officer
 of corporation is enjoined, 342.
 636. Grounds of issuing warrant of
 attachment against the cor-
 poration, 343.
 646. Attachment of unpaid subscrip-
 tion to foreign corporation,
 343.
 647. Id.; of interest in corporations,
 343.
 650. Certificate of defendant's inter-
 est to be furnished, 344.
 651. Persons refusing certificate may
 be examined, 344.
 707. When judgment enforced only
 against attached property, 344.
 791. Subd. 8, preferred causes on
 trial, 345.
 839. Admission by member of cor-
 poration, 345.
 868. Books of corporation, how pro-
 duced, 345.
 869. When personal attendance not
 required by subpoena duces
 tecum, 345.
 929. Books of foreign corporation,
 when evidence, 346.
 930. When a copy thereof is evidence,
 346.
 931. How copy to be verified, 346.
 1012. References, how made of ac-
 tions against corporations,
 346.
 1217. Judgment by default against
 foreign corporation, how
 taken, 347.
 393. No limitation of action on bank
 notes, etc., 347.
 394. Action against directors, etc., of
 banks, 347.
 872. Subds. 1, 7. Deposition, appli-
 cation; contents of affidavit,
 347.
 341. Jurisdiction of county courts,
 domestic corporations, etc.,
 when deemed resident, etc.,
 348.
 525. Verification; how and by whom
 made, 348.
 96). Public or corporate seal may be
 stamped, 349.
 1650. Action to compel the determi-
 nation of a claim to real prop-
 erty. This article applies to
 corporations, or receivers, 349.
 1879. Judgment creditors' action. Ap-
 plication of this article; what

SECTION:

- property cannot be reached, 349.
- 945. Record of bill of sale, etc., of vessels, 350.
- 1948. Actions against the usurper of an office or franchise. Attorney-general may maintain action, 350.
- 1950. Action triable by jury, 350.
- 1951. Assumption of office by person entitled, 350.
- 1952. Proceedings to obtain books and papers, 351.
- 1953. Damages, how recovered, 351.
- 1954. One action against several persons, 351.
- 1955. When injunction may be granted, 351.
- 1956. Final judgment in action for usurping office, 352.
- 1983. Scire facias, quo warranto, etc., abolished, 352.

SECTION:

- 1984. Actions to be brought in the name of the people, 352.
- 1987. Costs; how collected against corporation and usurpers of franchise, 352.
- 2146. Certiorari, "body," or "officer;" "determination;" what they include, 352.
- 3268. Subd. 2. When defendant may require security for costs, 353.
- 3269. Subd. 1. Id.; after action commenced, 353.
- 2463. Supplemental proceedings; cases where this chapter is not applicable; what property cannot be reached, 353.
- 2526. Citation, service upon a corporation, infant, lunatic, etc., 353.
- 3343. Miscellaneous general definitions and rules of construction, 354.

CHAPTER VIII.

THE PENAL CODE AND THE CODE OF CRIMINAL PROCEDURE.

PROVISIONS APPLICABLE TO CORPORATIONS.

A. THE PENAL CODE.

I. MISCONDUCT OF OFFICIALS AND EMPLOYEES OF CORPORATIONS; REGULATION OF APPLIANCES.

- | | |
|---|--|
| <ul style="list-style-type: none"> Punishment, how determined, 360. Construction, 361-362. Unlawful offers to railroad commissioners or their employees, 362. Misconduct of railroad commissioners and of their employees, 362. Persons unable to read not to act or be employed as engineers, 362. Misconduct of officials or employees of elevated railroads, 363. Intoxication or other misconduct of railroad or steamboat employees, 363. | <ul style="list-style-type: none"> Duties of locomotive engineers, 363. Placing other cars before passenger cars, 364. Platforms and heating apparatus of passenger car, 364. Guard posts; automatic couplers, 364. Other violation of duty by officers, agents or servants of railroad companies, 365. Officers of railroad companies to be uniformed, 365. Riding on freight trains, 365. |
|---|--|

II. FRAUDULENT ACTS BY CORPORATIONS AND THEIR OFFICERS AND MEMBERS.

- | | |
|---|--|
| <ul style="list-style-type: none"> Frauds in the organization of corporations, 366. Fraudulent issue of stock, script, etc., 366. | <ul style="list-style-type: none"> Frauds in procuring organization of corporation, etc., 367. Acting for foreign corporations not |
|---|--|

authorized to do business in this state, 367.	Falsely indicating person as corporate officer, 370.
Misconduct of directors of stock corporations, 367-368.	Conversion by trustee, larceny; how punished, 370-371.
Frauds in keeping accounts, 368.	Directors of corporation presumed to have knowledge, 371.
Misconduct of directors of moneyed corporations, 368-369.	Misconduct of officers and directors of stock corporations, 371.
Officer of corporation publishing false report of its condition, 369.	Misconduct of officers and employees of corporations, 371-372.
Insolvencies of corporation deemed fraudulent when, 369.	Misconduct of officers and agents of pipe-line corporations, 372.
Directors participating in fraudulent insolvency, how punishable, 369.	Misconduct at corporate elections, 372-373.
Unlawful discount of bills of foreign banks, 369.	Presumption of knowledge of corporate condition, 373.
Violation of duty of directors of moneyed corporations, 370.	Fraudulent conveyances, 373-374.
Officers of corporation selling shares, etc., when a misdemeanor, 370.	

III. FRAUDULENT ISSUE OR SALE OF DOCUMENTS OF TITLE TO MERCHANDISE.

Issuing fictitious certificates by pipe-line corporations, 374.	property received for transportation or storage, 375.
Issuing fictitious bills of lading, receipts and vouchers, 374-375.	Bill of lading or receipt issued by warehouseman must be cancelled on redelivery of the property, 375-376.
Erroneous bills of lading or receipts issued in good faith excepted, 375.	Property demanded by process of law, 376.
Duplicate receipts must be marked "duplicate," 375.	Destroying invoice, 376.
Selling, hypothecating or pledging	

IV. PASSAGE TICKETS; REGULATION AND SALE OF, ETC.

Sales by authorized agents restricted, 376.	Owners, pursers, etc., allowed to sell tickets, 377-378.
Unauthorized persons forbidden to sell certificates, receipts, etc., for the purpose of procuring tickets, 377-378.	Station masters, conductors, etc., allowed to sell tickets, 378.
Punishment for fraud on accounts, etc., 377.	What must be stated in passage tickets, 378.
Conspiracy to sell passage tickets in violation of law, 377.	Sale of tickets not filled out as required in last section is a misdemeanor, 378.
Conspirators may be indicted, though object not accomplished, 377.	Sales of passage tickets at excessive rates, 378-379.
Offices for unlawful sales of passage tickets are disorderly houses, 377.	"Company" defined, 379,
	Completed unissued instruments property, 379.
	Value of, how ascertained, 379.

V. FORGERY.

- | | |
|--|---|
| <p>Forgery in first degree defined, 379-380.</p> <p>Id.; false certificate to certain instruments, 380.</p> <p>Id.; in second degree, 380.</p> <p>Other cases of forgery in second degree, 381.</p> <p>Other cases of forgery in third degree, 381-382.</p> <p>Same, 382.</p> <p>Forging passage tickets, 382.</p> | <p>Officer of corporation selling, etc., shares, 382.</p> <p>Falsely indicating person as corporate officer, 383.</p> <p>Terms "forge" and "forging" generally defined, 383.</p> <p>Uttering, etc., forged instruments, etc., is forgery, 383.</p> <p>Uttering writing signed with wrongdoer's name, 383-384.</p> <p>Offenses against trade-marks, 384.</p> <p>"Affixing" defined, 384.</p> |
|--|---|

VI. REGULATIONS CONCERNING NAVIGATION; HEALTH AND SAFETY.

- | | |
|---|--|
| <p>Master of vessel bringing foreign convict, 384.</p> <p>Interfering with navigation, 384.</p> <p>Keeping wrecked goods a misdemeanor, 384.</p> <p>Bringing stolen goods into State, larceny, 384-385.</p> <p>Overloading passenger vessel, 385.</p> <p>Fitting out or lading any vessel, with intent to wreck the same, 385.</p> <p>Defacing marks upon wrecked property, 385.</p> <p>Officer unlawfully detaining wrecked property, 385.</p> <p>Ferries, 385-386.</p> <p>Altering, etc., signal lights for vessels, 386.</p> <p>Fires and lights, on vessels in certain counties, 386.</p> | <p>Violating condition of recognizance to keep a ferry, 386.</p> <p>Duty of masters to suppress gambling on board their vessels, 386.</p> <p>Violation of quarantine laws by master of vessel, 386-387.</p> <p>Giving false information relative to vessel, or permitting person to land before visit of health officers, 387.</p> <p>Landing from vessel before visit of health officers, 387.</p> <p>Going on board vessel at quarantine grounds, etc., 387.</p> <p>Obstructing health officer in performance of his duty, 387-388.</p> <p>Unlicensed piloting, 388.</p> <p>Coasting steamers excepted, 388.</p> <p>Exposing persons affected with a contagious disease in public places, 388.</p> |
|---|--|

VII. INJURIES TO PROPERTY; NUISANCE.

- | | |
|--|---|
| <p>Injuries to property, or interfering with railroad property; how punished, 388-389.</p> <p>Injuries to railroad tracks, etc., 389.</p> <p>Unlawful interference with gas meter or steam valve, 389-390.</p> <p>Injuring pier, sea wall, dock, lock,</p> | <p>buoy, pipe, main, sewer, telegraph, etc., 391-393.</p> <p>Keeping gunpowder, etc., 393.</p> <p>Throwing gas-tar, etc., into public waters, 393.</p> <p>Endangering life by maliciously placing explosive near building, 393-394.</p> |
|--|---|

VIII. DANGEROUS USE OF MACHINERY; HOMICIDE.

- | | |
|--|---|
| <p>Unauthorized pressure of steam, 394.</p> <p>Generation of unsafe amount of steam, 394.</p> <p>Mismanagement of steam boilers, 394.</p> <p>By negligent use of machinery, 394.</p> | <p>Killing by overloading passenger vessel, 394.</p> <p>Liability of persons in charge of steamboats, 395.</p> <p>Liability of persons in charge of steam engines, 395.</p> |
|--|---|

IX. ARSON.

Arson in first degree defined, 395.

Id.; second degree, 395.

Id.; in third degree, 395-396.

"Night-time" defined, 396.

"Building" defined, 396.

Burning certain property; how punished, 396.

X. BURGLARY.

Burglary in third degree, 396.

"Break" defined, 396.

"Night-time" defined, 397.

"Enter" defined, 397.

"Dwelling-house" defined, 397.

"Building" defined, 397.

XI. REGULATIONS CONCERNING ANIMALS.

Transporting animals for more than twenty-four consecutive hours a misdemeanor, 397.

Carrying animals in a cruel manner, a misdemeanor, 398.

Owner of animals, 398.

Overdriving an animal, and failure to feed properly, a misdemeanor, 398.

Definitions, 398.

XII. MISCELLANEOUS PROVISIONS.

Ejection of passenger, when declared not unlawful, 398-399.

Inn-keepers and carriers refusing to receive guests and passengers, 399.

Protection of civil and public rights, 399.

Relating to disorderly conduct on public conveyances, 399-400.

Acts committed out of the State, 400.

"A." Coercion by employers, 400.

Employments prohibited to children, 400.

Divulging, etc., telegram, a misdemeanor, 401.

Opening or publishing a sealed letter, etc., 401-402.

Duress and intimidation of voters, 402.

Furnishing libelous information, 402.

B. THE CODE OF CRIMINAL PROCEDURE.

Courts of special sessions, jurisdiction of, 403.

Of crime committed in the State on board of any railway train, 403.

Plea of guilty, how put in, 403.

Summons upon an information or presentment against a corporation, by whom issued, and when returnable, 403-404.

Form of the summons, 404.

When, and how served, 404.

Examination of the charge, 404.

Certificate of the magistrate, and return thereof, with depositions, 404.

Grand jury may proceed as in the case of a natural person, 404.

Appearance and plea to indictment, and proceedings thereon, 404-405.

Fine on conviction; how collected, 406.

CHAPTER IX.

MISCELLANEOUS LAWS.

How private corporations may be organized, 407.

The Whirlpool Bridge Company. Act creating, 407.

The Niagara Falls Power Company. Act creating, 408.

Increase or reduction of number of directors of a stock corporation, 409.

Improvement and maintenance of public roads in certain counties as city roads, 409-410.

CHAPTER X.

THE INTERSTATE COMMERCE ACT.

SECTION:

1. Carriers and transportation subject to the act; what terms "railroad" and "transportation" includes charges to be reasonable, 412-413.
2. Unjust discrimination forbidden, 413.
3. Undue or unreasonable preference or advantage forbidden; facilities for interchange of traffic, 414.
4. Long and short haul provision, 414-415.
5. Pooling of freights and division of earnings forbidden, 415.
6. Printing and posting of schedules of rates, fares, and charges; printing and posting of schedules of rates on freight carried through a foreign country; ten days public notice of advances in rates to be given, 415-416.

Ten days public notice if advance in rates to be given, 416.

Published rates not to be deviated from; copies of schedules of rates, fares and charges to be filed with commission, 416.

Copies of contracts and agreements to be filed with commission, 416.

Joint tariffs to be filed with commission; power of commission to prevent the publicity, ten days notice to commission of advance in joint rates, fares and charges, 416-417.

Three days notice to commission of reduction in joint rates, fares and charges, 417.

Power of commission to make advances or reductions public, 417.

Joint rates, fares and charges not to be deviated from, 417.

Commission may prescribe forms of schedules of rates, fares

SECTION:

and charges, 418.

Penalties for neglecting or refusing to file or publish rates, fares and charges, 418.

7. Continuous carriage of freights not to be unnecessarily interrupted, 418-419.

8. Liability of common carriers for damages, 419.

9. Persons claiming to be damaged may complain to commission or bring suits in United States courts; officers, etc., of defendant may be compelled to testify, 419.

10. Penalties for violations of act by carriers, their officers or agents; fine and imprisonment; penalties for false billing, etc., by shippers and other persons; fine and imprisonment; penalties for inducing common carriers to discriminate unjustly; fine and imprisonment; joint liability with carrier for damages, 420-422.

11. Inter-state commerce commissioners, how appointed; term of commissioners, 422.

12. Power of commission to require attendance of witnesses and production of books and papers; when and how taken; notice of intention to take deposition; witness to be sworn; evidence to be reduced to writing; witness in foreign country; fees; punishment for refusal to testify or produce books and papers, 422-425.

13. Complaint to commission; how and by whom made; reparation by carriers before investigation; investigation by the commission, 425.

14. Findings of commission; *prima facie* evidence in judicial proceedings; reports and decisions;

SECTION:

- authorized publication to be competent evidence; publication and distribution of annual reports of commission, 424-426.
15. Notice to common carriers to cease from violation of act; compliance with notice to cease from violation of act; reparation, 426-427.
16. Petition to United States courts in case of disobedience to order of commission; power of United States courts to hear and determine cases of disobedience; writs of injunction or other process against carriers in cases of disobedience; punishment for refusal to obey writs of injunction or other process; fine; appeals to Supreme Court of United States; petition to United States courts in cases of disobedience; when trial by jury is necessary; trial by jury; trial by court; appeals to Supreme Court of United States; counsel or attorneys' fees, 427-430.
17. Interstate commerce commission; form of procedure; official seal, 430.
18. Salaries of commissioners; secretary; how appointed; salary; offices and supplies; witness' fees; expenses of the commission—how paid, 430-431.
19. Principal office of the commission; sessions of the commission, 431.
20. Carriers subject to the act must

SECTION:

- render full annual reports to commission; commission may prescribe methods of keeping accounts, 431-432.
21. Annual report of the commission to Congress, 432.
22. Persons and property that may be carried free or at reduced rates; mileage, excursions, or commutation tickets; passes and free transportation to officers and employees of railroad companies; pending litigation not affected by act; jurisdiction of United States courts to issue writs of peremptory *mandamus* commanding the movement of inter-state traffic or the furnishing of cars or other transportation facilities, 432-433.
- Amendments to Interstate Commerce Act, 434-436.
- Unlawful to move rolling stock not equipped with air-brakes, etc., 434.
- Carriers not to haul cars unless properly equipped, 434.
- May refuse cars from other lines if not properly equipped, 434.
- Grab-irons or hand-holds to be provided, 434.
- American Railway Association to designate draw-bars for freight cars, 435.
- Penalty for violation of the provisions of this Act, 435.
- Powers of Interstate Commerce Commission to extend time of carriers to comply with this Act, 435-436.
- Index to Interstate Commerce Act, 437.

CHAPTER XI.

THE AMENDMENTS OF 1893 TO THE CORPORATION AND RAILROAD LAWS.

CORPORATION LAWS.

SECTION:

1. Proceedings to change the name of a corporation, 443-445.
2. Corporate powers, 447-448.

SECTION:

3. Meeting to increase or reduce capital stock, 448-449.

THE RAILROAD LAW.

- | | |
|---|--|
| <p>4. Corporate powers, 449-450.
 5. The same, 450-452.
 6. The same, 452-453.
 7. Street surface railroads, 453-458.
 8. The same, 458-459.
 9. The same, 459-460.
 10. Bridge companies may lay tracks, 460.
 11. Certificate of incorporation, 460-461.
 12. Grade crossings, 461-462.
 13. Safety appliances, 462-463.
 14. Automatic couplers, 463-465.
 15. Relief of street surface railroad companies, 465-466.</p> | <p>16. Weekly payment of wages, 466-467.
 17. Hours of service on railroads, 468.
 18. Protection of game, 468-469.
 19. Protection of Adirondack park, 469-470.
 20. Sale of liquors by common carriers, 470.
 21. Employment of intemperate persons, 471.
 22. Stockholders' meetings; rights of municipal corporations, 471.
 23. Penal Code, 471.
 24. Public health, 471-472.</p> |
|---|--|

INDEX, 473.

ADDENDA.

Containing Laws Enacted by the Legislature of 1894, 595 *et seq.*

TABLE Showing What Laws the General Railroad Act is Based Upon.*

Section.	Based upon Laws of.	Chapter.	Sections.	Amended by Laws of.	Chapter.	Section.	Based upon Laws of.	Chapter.	Sections.	Amended by Laws of.	Chapter.	
Subdivisions.	2	1850 1866 1871	140 697 560	1, 2 1 5	1872 1877 1879	81 103 293	1854 1871	282 560	4 8	1879 1882 1877 1879 1883 1888 1886	541 82 103 293 384 514 601	
		1875 1881 1884	606 468 252	9 1, 2 1			1875 1881 1886	606 140 148	18, 24 25			
	3	1872	829				10	1886	403	1, 2		
	4	1850 1875	140 606	28 26			11	1850	140	24, 28 Sub. 5	1864 1880 1887	582 183 724
	1	1850	140	28				1851	19	4		
	2	1850	140	Subd. 1 13, 28			12	1850	140	28 Sub. 6	1872 1880 1887	350 583 724
		1875	606	Subs. 2, 3 17, 26			13	1847 1847 1850	272 404 140	4 1 23		
	3	1850	140	Subs. 1, 2 28				1854 1855 1871	282 478 560	17 2	1876 1886	77 634
	4	1850	140	Sub. 4 28			14	1851	19	2		
	5	1850	140	Sub. 5 28			15	1851	19	1		
Subdivisions.		1875	606	Sub. 6 26	1887 1880	724 133	16	1854 1855 1871	282 478 560	13 2		
	6	1850	140	Sub. 3 28			17	1872 1880	843 582	1, 3, 4 1		
	7	1850	140	Sub. 8 28			18	1866 1881	697 468	4 1		
		1850	140	Sub. 7 26			19	1881	468	5		
		1875	606	Sub. 4 28				1881	468	9		
	8	1850	140	Sub. 9 2			20	1880	267			
	9	1875	586	2			21	1882	140			
	5	1882	273	2			30	1890	416			
		1846	155					1850	140	12	1871	669
		1850	140	47			31	1875	606	16		
Subdivisions.		1867	775			1847	272	5				
		1875	598		1879	350	1850	140	27	1862 1871 1877 1879 1883	449 669 103 293 384	
		1881	338			1871	560	6				
		1882	405									
		1883	519	1								
	6	1891	287		32	1850	140	44				
		1838	161			1854	282	8, 9				
	7	1850	140	22, 45	1871	560	1864	582	2			
		1847	272	3	33	1850	140	40				
		1847	404	2, 3	34	1884	439	3	1889	242		
	1850	140	13, 21, 26	1869 1877 1881 1853	237 224 649 53	1847 1850 1875 1850	222 140 606 140	36 30 30 36	1867	49		
	1851	19	3	1853	53	35	1850	140	36			

*This table supersedes the one at page 85.

TABLE Showing What Laws the General Railroad Act is Based Upon.—Continued.

Section.	Based upon Laws of.	Chapter.	Sections.	Amended by Laws of.	Chapter.	Section.	Based upon Laws of.	Chapter.	Sections.	Amended by Laws of.	Chapter.
37	1854	282	4	1879 1882	541 82	36	1884	222		1873 1880	352 94
	1866	697	3				1847	439	5		
	1884	422	2				1875	256	1, 2		
	1871	560	6				1880	502	2		
	1883	386	1				1869	917	2, 3		
Subdivisions.	1887	536	1	1879 1883	293 384	71	1880	155		1880	94
	1881	470	1				1869	917	4		
	1850	140	28				1869	917	5		
	1869	917	3, 7				1875	256	6		
	1850	140	33				1879	505	3		
38	1850	140	33	1880	133	72	1879	505	1	1880	94
39	1857	185					1879	505	2		
40	1850	140	35				1839	218			
41	1875	606	29				1880	349			
42	1858	125					1884	252	15		
43	1865	246		1886	415	78	1885	305		1889	532
44	1850	140	30				1855	302	1		
45	1875	606	27				1867	254			
46	1847	272	6				1869	917	9		
47	1850	140	37				1884	252	15		
48	1884	439	7	1884	444	81	1857	444	1	1879	503
49	1854	282	10, 11, 12				1880	5	1, 2		
50	1857	444	3, 4				1874	430	5		
51	1868	573					1884	252	1		
52	1847	270	9				1884	252	3, 4		
53	1884	439	12	1888	189	92	1854	140	1	1886 1889 1887 1899	642 564 622 281
54	1887	616	2				1884	140	2		
55	1884	439	6, 8				1886	65	1, 2		
56	1864	582	3								
57	1887	616	1, 3								
58	1847	100	3, 4	1889 1890 1881	76 421 296	94	1884	252	4	1889	531
59	1850	140	44, 46				1884	252	8		
60	1878	261					1880	415	1, 2		
61	1880	585					1882	349	1, 2, 3		
62	1884	193					1884	252	9		
63	1886	605		1880	575	100	1884	252	10	1889	532
64	1816	215	17				1891	287			
65	1850	140	34				1873	432	1		
66	1875	606	28				1884	252	12		
67	1850	140	31, 32				1884	252	13		
68	1867	906	2	1880	98	101	1884	252	14	1889	532
69	1869	844	1				1885	305	3		
70	1863	346					1885	305	4		
71	1869	917					1886	271	1, 2, 3		
72	1875	108					1888	549	1, 2, 3, 4, 5		
73	1881	685		1886	259	102	1888	560		1890	543
74	1883	337					1888	560	17		
75	1875	193					1884	252	1		
76	1880	223					1875	606	2		
77	1881	685					1875	606	3		
78	1883	337		1880	417	123	1875	606	4	1880	417
79	1879	293									
80	1883	384									
81	1879	293									
82	1883	384									

TABLE Showing What Laws the General Railroad Act is Based Upon.—Continued.

Section.	Based upon Laws of.	Chapter.	Sections.	Amended by Laws of.	Chapter.	Section.	Based upon Laws of.	Chapter.	Sections.	Amended by Laws of.	Chapter.
124	1875	606	5, 6	1881	485	153	1884	441	2, 3, 4		
125	1875	606	17, 42-44	1882	393		1882	353	12		
127	1875	606	8			154	1882	353	1		
128	1875	606	8			155	1882	353	2		
129	1875	606	26				1884	421	2		
			Subs. 4, 5			156	1882	353	3		
130	1875	606	35			157	1882	353	4, 14	1883	388
131	1875	606	36			158	1882	353	10		
132	1875	606	37				1850	140	31	1880	575
133	1875	606	21, 45-49							1890	98
134	1875	606	38			159	1882	353	4		
135	1875	606	39	1888	514½	160	1882	353	5		
136	1875	606	39	1888	514½	161	1882	353	8		
		514	3			162	1882	353	8		
137	1875	606	50			163	1882	353	7		
138	1881	399	1			164	1882	353	4		
							1884	441	1	1886	509
139	1881	399	2			165	1884	421	3-6		
140	1881	399	3, 4			166	1882	353	9, 10, 11		
141	1881	399	5			167	1884	421	1		
150	1882	353	1			168	1882	353	14	1883	388
151	1882	353	1			169	1882	353	12		
							1884	441	1-4	1886	509
152	1882	353	1			170	1882	353	13		
	1884	441	1	1886	509						

TABLE Showing What Laws The General Corporation Act is Based Upon.*

Section.	Based upon Laws of.	Chapter.	Sections.	Amended by Laws of.	Chapter.	Section.	Based upon Laws of.	Chapter.	Sections.	Amended by Laws of.	Chapter.
5	1850	140	1			17	1887	450			
	1866	697	1								
	1875	606	9			18	1877	158			
	1881	468	2			19	1 R. S.	Ch 18	T 3, § 4		
	1884	252	1			20	1850	140	5		
7	1881	468	11				1880	510	2		
	1870	135	1, 2				1875	611	26		
9	1850	140	3				1 R. S.	Ch 18	T 4, § 6		
	1875	606	9				1881	468	10		
	1881	468	3			23	1 R. S.	Ch 18	T 4, § 8		
10	1 R. S.	Ch 18	T 3, § 3			27	1 R. S.	Ch 18	T 4, § 5		
11	1 R. S.	Ch 18	T 3, § 1			28	1885	489	2		
	1 R. S.	Ch 18	T 4, § 6			29	1 R. S.	Ch 18	T 3, § 6		
12	1890	497				30	1 R. S.	Ch 18	T 3, § 9,		
									10		
13	1882	290				32	1866	697	5		
14	1872	146					1867	937			

*This table supersedes the one at page 138o.

TABLE Showing What Laws the Stock Corporation Act is Based Upon.

Section.	Based upon Laws of.	Chapter.	Sections.	Amended by Laws of.	Chapter.	Section.	Based upon Laws of.	Chapter.	Sections.	Amended by Laws of.	Chapter.
2	1850	140	28 Sub. 10	1880 1887	133 724	29	1 R. S. 1848	Ch 18 40	T 4, § 1 25		
	1875	606	26 Sub. 6			31	1875 1848	611 40	16, 17 15		
	1864	517	2	1871 1878	481 163		1875	611	21		
3	1850	140	5	1873	710	40	1850	140	8		
	1874	430	1	1876	446		1875	606	13		
	1873	469					1881	468	12		
4	1853	502					1875	146		1875 1883	119 361
	1874	430	1, 2 to Sub. 1	1876	446	41	1850	140	4		
5	1880	155	2	1876	446	42	1875	611	14		
	1874	430	Subs. 1, 2, 3			43	1850	140	7		
6	1874	430	3, 4				1875	606	11		
20	1 R. S.	T 4	§ 7	1854	282	44	1881	468	8	1880 1889	133 426
	1850	140	5	1873	710		1850	140	9		
	1875	586	1				1875	606	25		
	1875	606	10				1878	264	1		
	1881	468	4, 10				1881	468	11		
21	1879	395				45	1850	140	9		
	1864	582	3	1883	46		1878	264	2		
	1891	57				46	1850	140	9		
22	1885	489	1				1878	264	3		
23	1 R. S.	Ch 18	T 4, § 2			47	1880	225			
	1848	40	13			48	1 R. S.	Ch 18	T 4, § 4		
	1875	611	19			49	1853	502			
24	1 R. S.	Ch 18	T 4, § 3			50	1873	151	1		
	1848	40	23			51	1873	151	2		
	1875	611	22			52	1848	40	27	1862	472
25	1848	40	14			53	1842	165	1, 2		
	1875	611	20			54	1850	140	10, 11	1854	282
	1 R. S.	Ch 18	T 4, § 2				1875	606	12, 15		
27	1850	140	6				1848	40	10, 11, 16, 18		
	1875	606	10								
	1881	468	4								
28	1 R. S.	Ch 18	T 4, § 7			55	1875	611	23, 37		
	1850	140	5				1848	40	24		
	1880	510	1				1875	611	25		
	1881	468	10								

TABLE OF LAWS

TABLE of laws contained herein, and showing those which have been amended or repealed.

YEAR.	Chap.	Section.	AMENDED BY		SUBJECT.	Page of this book.	REPEALED BY	
			Laws of—	Chap.			Laws of—	Chap.
1890	565	1-171	1891	367	General railroad law	1-78n		
			1892	676				
				306				
				362				
				460				
				534				
				667				
				700				
				702				
			1893	433	Corporate powers; when to cease.	449		
		5	1893	316	Tunnel railroads.	450		
		16	1892	676	Electric light and power company.	595		
		21	1893	546	Stocks of municipal corporations.	471		
		75	1893	433	Lease of road.	453		
		78	1893	434	Street surface railroads.	453		
		90	1893	434	Consent of property owners, etc.	453		
		91	1894	723	do	596		
			1893	434	Consent of local authorities; how procured.	454		
		92	1893	434	Condition upon which consent given, etc.	455		
		93	1893	434	Within what time road to be built.	458		
		99	1893	434	Construction of road in street, etc.	459		
		102	1894	693	do	597		
			1894	723	do	596		
			1894	452	Railway appliances	598		
		172	1894	497	General corporation law	107-123		
1890	563	1-37	1892	400	Limitations upon amount of property.	598		
		12	1894					

18	1892	687	Limitations upon amount of property.	599
18	1894	136	Foreign corporations.....	599
1-55	1892	688	Stock corporation law.....	33-1380
33	1893	638	Sale of franchise and property.....	447
44	1892	688	Increase or reduction of capital stock.....	599
1894	1894	346	.....	
45	1893	196	Meeting to increase or reduce stock.....	448
46	1893	700	Procedure thereat.....	448-449
56	.....	.....	.....	
1-36	.....	.....	Increase or reduction of shares.....	449
27	1894	447	Statutory construction law.....	138p-138
32	1894	448	Definitions.....	599
1-37	1894	102	Rule of construction.....	600
1-3	1892	475	Rapid transit act.....	151-178
3357-3384	.....	.....	Amendments thereto.....	272-274
3874	1894	.....	Authority for passage of certain acts.....	178-179
3380-3397	.....	.....	Condemnation law.....	189-201
.....	.....	.....	Amendment thereto.....	604
.....	.....	.....	Sale of corporate real property.....	202-204
.....	.....	.....	Alteration or repeal, etc., of charters.....	205
.....	.....	.....	do do do.....	205-206
.....	.....	.....	Change of name.....	206
.....	1894	264	do do (See L. 1893, chap. 366, p. 448 herein).....	602
2413	.....	.....	Quorum of directors.....	206
6	.....	.....	Election of directors.....	206
1	.....	.....	Appointment of officers.....	206
6	.....	.....	Pleading incorporation.....	207
1775	.....	.....	Proving corporate existence.....	208-209
1776	.....	.....	Elevated railroads; (see p. 211 herein).....	209-210
1	.....	.....	Hours of labor; (see p. 468 herein).....	
294	1887	592	.....	468
151	1887	529	.....	210
.....	1892	711	Railroads in New York city; (see pp. 211, 218 herein).....	210
1943	.....	.....	do do.....	211
1944	.....	.....	do do.....	
1946	.....	.....	.....	

TABLE of laws contained herein, and showing those which have been amended or repealed—(Continued).

YEAR.	Chap.	Section.	AMENDED BY		SUBJECT.	Page of this book.	REPEALED BY	
			Laws of—	Chap.			Laws of—	Chap.
1882.....	182	1	....	....	Railroads in Brooklyn.....	211	1892	687
1875.....	606	31	....	....	Intoxication of employees.....	211		
1885.....	554	....	....	....	Elevated railroads in N. Y. city; (see pp. 208, 210 herein)	211		
New York Constitu'n Art. 3!	....	18	....	....	Restrictions as to consents.....	212		
1891.....	287	1	....	....	Street railroads.....	213	1892	687
1867.....	906	1	....	....	Report of horse railroads.....	213	1890	687
1872.....	590	1, 2, 4	1886	543	Obstruction of tracks.....	216-217		
1882.....	410	1938	....	....	Use of salt on tracks.....	217		
.....	410	1939	....	....	Interference by processions.....	217		
.....	410	445	....	....	Use of hose bridges.....	217		
1860.....	10	1	....	....	Railroads in New York city; (see pp. 209-211 herein)....	218		
1885.....	229	4	1886	431	Street railroad fares in Buffalo.....	218-219		
1869.....	165	25	....	....	Railroads in parks in Buffalo.....	219		
1875.....	600	1, 3	1877	202	Street railroad fares in Buffalo.....	219-220		
1865.....	410	....	....	....	Brooklyn St. and El. R. R.....	221		
New York Constitu'n Art 8	....	....	1874	....	Municipal aid to railroads.....	222		
1881.....	522	10, 11	1883	453	Municipal aid bonds.....	222-225	1892	685
1886.....	316	1-5	....	....	do do.....	225-227	1892	685
1886.....	278	1-3	....	....	do do.....	228	1892	685
1871.....	537	1	1882	293	do do.....	228-229	1892	685
1875.....	585	1-5	....	....	do do.....	230-231	1892	685
1875.....	421	1	....	....	do do.....	231	1892	685
1877.....	349	1-5	....	....	do do.....	232-234	1892	685
1892.....	685	12-20	....	....	Municipal securities.....	234a-234e		
1849.....	271	1	....	....	Conversion of stock into bonds.....	235		
1878.....	595	1-4	....	....	Indorsement of R. R. bonds.....	236		

1871.....	84	1-4	....	Transfer of railroad bonds.....	236	1892	686
1871.....	84	2	....	Railroad bonds.....	236-237		
1891.....	267	1	....	Change of gauge.....	237		
1868.....	779	....	....	Railroad mortgages.....	237-238		
1884.....	315	2	1885	Conditional sales.....	238-239		
.....	....	7	1886	do do.....	239-240		
1883.....	333	1	....	Cash payments to employees.....	240-241		
1889.....	351	1	1888	Weekly payments; (see p. 466 herein).....	241-242		
1890.....	338	1-4	1893	Payment of fares.....	242-243		
1889.....	38	1	....	Lighting tunnels.....	243-245		
1889.....	360	1-7	....	Automatic couplers; (see pp. 462, 463).....	245-246		
1889.....	524	1-3	....	Fires in forest lands; (see p. 469).....	246-247		
1885.....	283	25-29	....	Lights on swing bridges.....	247		
1880.....	541	1-2	....	Railroads across highways.....	249-250		
1853.....	62	1-3	....	do do.....	250		
1835.....	300	1	....	Sales of forest lands.....	250-252		
1835.....	283	8	....	Title to salt lands.....	252		
1848.....	316	7	....	Title of United States to lands.....	252-253		
1870.....	70	1	....	Railroads across canals.....	253		
1834.....	276	17	....	Railroads in lieu of canals.....	253-254		
1881.....	452	1-3	....	Electric light, etc., companies; (see p. 595).....	254		
1890.....	416	1-2	....	Plank-roads, etc.....	255-258		
1879.....	214	1-2	....	Fares to immigrants.....	258-260		
1855.....	474	1-5	....	do do.....	260		
1868.....	793	1-3	....	Immigrant passengers.....	261		
1853.....	619	1	....	Passenger tickets.....	261		
Penal Code.....	....	626	....	Sleeping car tickets.....	261		
1855.....	125	2	....	Free passes.....	262-263		
1867.....	4	1	....	Trunks and baggage.....	264		
1837.....	800	1-5	....	Milk cans.....	264-265		
1865.....	295	3	....	do.....	265		
1887.....	401	11-13	....	Employment of intemperate persons.....	266		
1887.....	628	31	....	Oils used in cars.....	266		
1857.....	292	2, 5	....	Contagious diseases; (see p. 471).....	267		
1883.....	329	1	....	Contagious diseases in animals.....			
1886.....	184	2	1888				
1878.....	....	....	....				

TABLE of laws contained herein, and showing those which have been amended or repealed—(Continued).

YEAR.	Chap.	Section.	AMENDED BY		SUBJECT.	Page of this book.	REPEALED BY	
			Laws of—	Chap.			Laws of—	Chap.
1885	490	4	....	....	Tramp act.....	267	1892	680
1890	262	26	....	....	Elections.....	268		
1890	94	410	....	....	do.....	268-269		
1879	534	1, 10	....	....	Preservation of game; (see p. 468).....	269-270		
1880	585	1-2	....	....	Accidents to children.....	270	1892	687
1847	133	10	....	....	Railroads across cemeteries.....	270-271		
1887	63	13	....	....	Adjustment of grievances.....	271		
1882	364	1-4	....	....	Interchange of freight and passengers.....	271-272		
1891	4	1-37	1892	102	Rapid transit act amendments.....	272-274		
1875	392	1-8	....	....	Mechanic's liens.....	275-277		
1870	529		....	....	do.....	277-278		
1881	675	1-5	1885	533	School taxes.....	279-280		
1867	694	1-5	1884	414	do.....	280-281		
			1885	340	Place of assessment.....	282		
1883	392	1	....	....	Payment of taxes.....	282		
1847	344	1-2	1878	44	do.....	282-284		
1870	506	1-5	....	....	General act for taxation.....	284-294	\$ 1, 1892	686
1880	542	1-20	1881	361				
			1882	151				
			1885	501				
			1889	463				
			1890	522				
			1894	562	Of capital stock.....	600		
					Collection of taxes.....	294-295		
1886	266	1	....	....	Taxation on organization.....	295-296		
1886	143	1-2	1887	284	Amendment thereto.....	601		
			1892	668				

1 R. S.	387	1	1873	530	Taxation, railroad companies subject to	296a
1 R. S.	387	2 .. {	1881	293	Taxation, definition of word "land"	296b
1 R. S.	388	3	1881	293	Taxation - do do "personal estate"	296c
1 R. S.	414	1	1881	293	Taxation, capital stock	296c
1875	456	3	1881	293	Taxation, do	296c
1 R. S.	388	7	1881	293	Taxation, not levied against owners	296d
1 R. S.	390	6	1881	293	Taxation, where real estate is assessable	296d
1 R. S.	393	17	1881	176	Taxation, where personal estate is assessable, etc.	296e
1 R. S.	398	6	1881	293	Taxation, certain sections amended	296e
1 R. S.	414	1-2	1881	293	Taxation, general provisions for assessment	296e-296f
1 R. S.	415	3-6	1881	65 4	Taxation, assessment and collection of	296f-296g
1 R. S.	416	8, 15	1881	456	Taxation, further provisions	296g-296h
1 R. S.	417	16-22	1881	456	Taxation, general provisions	296h-296i
1890	568	62	1881	456	Highway taxes	296i-296j
1885	427	5	1881	101	Taxes on vacant lands	296j-296k
1 R. S.	398	2	1881	196	Collection of taxes	296k
1886	659	1-6	1881	503	Taxes on telegraph lines	296k-296m
1884	499	7, 8, 11	1881	503	Placing conductors underground	296m-296o
1892	686	53	1881	503	Title of corporations	296o
1880	269	1	1881	503	Review of assessment	296o
1881	176	5	1881	536	Reduction of valuation	296p
1892	399	1, 7, 9, 22	1881	639	Taxable transfers	296p-296r
1880	537	1-2	1881	331	Receivers, report of	297
1880	537	3-4	1881	331	Receivers, notice of motion, etc.	298-299
1883	378	1-11 {	1881	275	Receivers, appointment and duties of	299-302
1884	285	1	1881	40	Receivers, transfers to	302
1886	310	1-11	1881	601	Receivers, dissolution of corporations	302-307
1885	376	1	1881	601	Receivers, wages of employees	307
1891	34	1	1881	348	Receivers, appraisal of property	308
2 R. S.	464	42, 68-89	1881	487	Receivers, rights, duties, etc., of	308-314
1858	314	1-2	1881	487	Receivers, illegal transfers	315
1870	151	4-5	1881	264	Punishment of directors	315-316
Code Civil Procedure	...	2413	1894	264	Provisions applicable to corporations	357-402
...	...	2415	1894	304	Amendments	602-604
...	...	2420	1894	304	...	604

TABLE OF LAWS

TABLE of laws contained herein, and showing those which have been amended or repealed — (Continued.)

YEAR.	Chap.	Section.	AMENDED BY		SUBJECT.	Page of this book	REPEALED BY	
			Laws of—	Chap.			Laws of—	Chap.
Code Civil Procedure	..	2427	...	258	Provisions applicable to corporations	603-604		
Penal Code	...	...	...	...	do do	357-402		
Code of Criminal Pro.	...	...	...	...	Organization of corporations	403-406		
New York Constitution	Art. 7	1	...	...	Whirlpool Bridge Company	407		
1891	189	7	...	...	Niagara Falls Power Company	407-408		
1891	253	10	...	...	Increase or reduction of directors	408-409		
1891	57	1, 3	...	...	Improvement of roads	409		
1843	555	7	...	...	Interstate Commerce Act	409-410		
U. S. R. S.	...	...	...	...	Change of name	411-441		
Code Civil Procedure	...	241-247	1898	566	Stock corporation law, amendment	444-447		
1890	564	45, 46, 56	1893	634	Increase or reduction of stock	447-448		
1890	564	...	1893	196	Railroad law, amendment	448-449		
1890	565	5	1893	700	do do	449-450		
1890	...	16	1893	316	do do	450-452		
1890	...	78	1893	433	do do	452-453		
1890	...	90-93.	1893	434	do do	453-460		
1890	...	99, 102	...	...	Bridge companies	460		
1893	225	1	...	...	Certificate of incorporation	460-461		
1893	288	1	...	...	Grade crossings	461-462		
1893	239	1-2	...	...	Safety appliances	462-463		
1893	543	1-7	...	...	Automatic couplers	463-465		
1893	544	1-7	...	...	Relief of street railroads	465-466		
1890	679	1-2	...	...	Weekly payment of wages	466-467		
1890	388	1-3	1893	717	Hours of service	468		
1892	711	1-4	...	...				

1892.	488	46, 76, 109	...	...	Protection of game...	468-489
1893.	382	107	...	...	Protection of Adirondack park.	469-470
1892.	401	30	...	...	Sale of liquors by carriers	470
1892.	401	39	...	...	Employment of intemperate persons	471
1890.	565	75	1893	546	Stockholders' meeting	471
1893.	692	443a	...	...	Penal Code	471
1893.	661	23	...	...	Public health	471-472
1890.	565	21	1892	676	Electric light and power corporation.	595
1890.	...	...	1894	648	...	595
1890.	565	91	1894	723	Street surface railroads	596
1890.	565	102	1893	434	Railroads in streets.	597
1890.	...	...	1894	693	do	...
1890.	565	172	1894	452	Railway appliances	598
1890.	563	12	1894	400	Limitations upon amount of property	598
1890.	563	18	1892	687	Foreign corporations	599
1890.	...	...	1894	136	do	...
1890.	564	44	1892	688	Capital stock	600
1890.	...	...	1894	346	do	...
1892.	677	27	1894	447	Definitions, statutory construction.	599
1892.	677	32	1894	448	Rule of construction.	600
1880.	542	11	1881	361	Taxation; basis of computation	600
...	...	...	1882	151	...	...
...	...	...	1885	501	...	...
...	...	...	1889	463	...	...
...	...	...	1890	522	...	...
...	...	...	1892	562	...	...
...	...	...	1894	562	...	...
1886.	143	1	1887	284	Taxation; on organization	601
...	...	...	1892	668	...	...
Code Civil Procedure	2413	...	1894	264	Change of name of corporation.	601
...	2415	...	...	...	...	...
...	2420	...	1894	304	Voluntary dissolution of corporations.	603
...	2427	...	1894	258	...	...
...	3374	...	1894	475	Condemnation proceedings.	604

THE RAILROAD LAWS OF NEW YORK.

PART FIRST.

CHAPTER I.

THE GENERAL RAILROAD LAW,¹ LAWS OF 1890,
CHAPTER 565, AS AMENDED BY LAWS OF 1892,
CHAPTER 676, ETC.

CHAPTER XXXIX OF THE GENERAL LAWS.

THE RAILROAD LAW.

- ARTICLE 1. Organization; general powers; location (§§ 1-21).
2. Construction; operation; management (§§ 30-59).
3. Consolidation; lease; sale; reorganization (§§ 70-83).
4. Street surface railroads (§§ 90-110).
5. Other railroads in cities and counties (§§ 120-142).
6. Board of railroad commissioners (§§ 150-171).

ARTICLE I.

ORGANIZATION, GENERAL POWERS, LOCATION.

- SECTION 1. Short title.
2. Incorporation.
3. Supplemental certificate.
4. Additional powers conferred:
 1. Entry upon lands for purpose of survey.
 2. Acquisition of real property.
 3. Construction of road.
 4. Intersection of streams, highways, plank-roads, turnpikes
 and canals.
 5. Intersection of other railroads.
 6. Buildings and stations.
 7. Transportation of persons and property.
 8. Time and manner of transportation.
 9. Purchase of lands and stock in other states.
5. When corporate powers to cease.
6. Location of route.
7. Acquisition of title to real property.
8. Railroads through public lands.

¹ See Notes of Decisions applicable to this act at the end of this chapter.

9. Railroads through Indian lands.
10. Railroads through Chautauqua assembly grounds.
11. Intersection of highways, additional lands for.
12. Intersection of other railroads.
13. Change of route, grade or terminus.
14. Construction of part of line in another state.
15. Two roads having the same location.
16. Tunnel railroads.
17. Railroads in foreign countries.
18. Additional corporate powers of such road.
19. Location of principal office of such road.
20. Individual, joint-stock association, or other corporation may lay down and maintain railroad tracks in certain cases.
21. When electric light and power corporation may become a railroad corporation.

SECTION 1. Short title.—This chapter shall be known as the railroad law.¹

§ 2. Incorporation.—Fifteen or more persons may become corporation, for the purpose of building, maintaining and operating a railroad, or of maintaining and operating a railroad already built, not owned by a railroad corporation, or for both purposes by executing, acknowledging and filing a certificate, in which shall be stated :

1. The name of the corporation.
2. The number of years it is to continue.
3. The kind of road to be built or operated.
4. Its length and termini.
5. The name of each county in which any part of it is to be located.
6. The amount of the capital stock, which shall not be less than ten thousand dollars for every mile of road built or proposed to be built, except a narrow-gauge road, when it shall be not less than three thousand dollars for every such mile.
7. The number of shares into which the capital stock is to be divided.
8. If the capital stock is to consist of common and preferred stock, the amount of each class and the rights and privileges of the latter over the former.
9. The names and post-office addresses of the directors of the

¹ See Table A., page 85, showing what laws the General Railroad Law is based upon.

corporation, not less than nine, who shall manage its affairs for the first year.

10. The place where its principal office is to be located.

11. If a street surface railroad, the names and description of the streets, avenues and highways in which the road is to be constructed.

Added by Ch. 676, Laws 1892.

12. If it is to be a railway corporation, specified in article five of this chapter, the statements required by that article to be inserted in the certificate of incorporation.

13. The name and post-office address of each subscriber to the certificate and the number of shares of stock he agrees to take.

Such certificate shall have indorsed thereon, or annexed thereto, to be taken as a part thereof, an affidavit of at least three of such directors, that at least ten per cent of the minimum amount of capital stock authorized by law has been subscribed thereto, and paid in good faith and in cash to the directors named in the certificate, and that it is intended in good faith to build, maintain and operate the road mentioned therein. In case of a railway corporation specified in article five of this chapter, the affidavit of the directors shall show that the full amount of such capital stock has been in good faith subscribed, and there shall be annexed to the certificate of incorporation and as a part thereof the certificate of the railroad commissioners showing the organization of the corporation for the purposes mentioned in the certificate.

The filing of every certificate, where the amount of stock required by this section has not been in good faith subscribed and paid in cash, shall be void.

As amended, chapter 676, Laws 1892.

§ 3. Supplemental certificate.—If the names and places of residence of the directors of the corporation have been omitted from the certificate, when executed and acknowledged, and thereafter the requisite number of directors has been chosen at a meeting of the subscribers to the certificate, a supplemental certificate, containing their names and places of residence, may be filed with such certificate with the same force and effect as if the names and places of residence of the directors had been originally inserted therein.

§ 4. Additional powers conferred.—Subject to the limita-

tions and requirements of this chapter, every railroad corporation, in addition to the powers given by the general and stock corporation laws, shall have power :

1. **Entry upon land for purposes of survey.**—To cause the necessary examination and survey for its proposed railroad to be made for the selection of the most advantageous route ; and for such purpose, by its officers, agents or servants, to enter upon any lands or waters, subject to liability to the owner for all damages done.

• 2. **Acquisition of real property.**—To take and hold such voluntary grants of real estate and other property as shall be made to it to aid in the construction, maintenance and accommodation of its railroad ; and to acquire by condemnation such real estate and property as may be necessary for such construction, maintenance and accommodation in the manner provided by law, but the real property acquired by condemnation shall be held and used only for the purposes of the corporation during the continuance of the corporate existence .

3. **Construction of road.**—To lay out its road not exceeding six rods in width, and to construct the same ; and, for the purpose of cuttings and embankments, to take such additional lands as may be necessary for the proper construction and security of the road ; and to cut down any standing trees that may be in danger of falling on the road, upon making compensation therefor.

4. **Intersection of streams, highways, plank-roads, turn-pikes and canals.**—To construct its road across, along or upon any stream, water-course, highway, plank-road, turnpike, or across any of the canals of the state, which the route of its road shall intersect or touch.

5. **Intersection of other railroads.**—To cross, intersect, join, or unite its railroad with any other railroad before constructed, at any point on its route and upon the ground of such other railroad corporation, with the necessary turnouts, sidings, switches, and other conveniences in furtherance of the objects of its connections.

6. **Buildings and stations.**—To erect and maintain all necessary and convenient buildings, stations, fixtures and machinery for the accommodation and use of its passengers, freight and business.

7. Transportation of persons and property.—To take and convey persons and property on its railroad by the power or force of steam, or of animals, or by any mechanical power, except where such power is specially prescribed in this chapter, and to receive compensation therefor.

8. Time and manner of transportation.—To regulate the time and manner in which passengers and property shall be transported, and the compensation to be paid therefor.

9. Purchase of lands and stock in other states.—To acquire and dispose of any real property in any other state through which any part of its railroad is operated, and stock in any foreign corporation owning lands in another state for the purpose of securing for such railroad corporation in this state a permanent supply of fuel for its use, and stock of corporations in this state, formed for the purpose of erecting union railway depots.

10. From time to time to borrow such sums of money as may be necessary for completing and finishing or operating its railroad and to issue and dispose of its bonds for any amount so borrowed, and to mortgage its property and franchises to secure the payment of any debts contracted by the company for the purposes aforesaid.

As amended, ch. 676, Laws 1892.

§ 5. When corporate powers to cease.—If any domestic railroad corporation shall not, within five years after its certificate of incorporation is filed, begin the construction of its road and expend thereon ten per cent of the amount of its capital, or shall not finish its road and put it in operation in ten years from the time of filing such certificate, its corporate existence and powers shall cease.

§ 6. Location of route.—Every railroad corporation, except a street surface railroad corporation and an elevated railway corporation, before constructing any part of its road in any county named in its certificate of incorporation, or instituting any proceedings for the condemnation of real property therein, shall make a map and profile of the route adopted by it in such county, certified by the president and engineer of the corporation, or a majority of the directors, and file it in the office of the clerk of the county in which the road is to be made. The corporation shall give written notice to all actual occupants of the lands over which the route of the road is so designated, and which has not

been purchased by or given to it, of the time and place such map or profile were filed, and that such route passes over the lands of such occupants. Any such occupant or the owner of the land aggrieved by the proposed location, may, within fifteen days after receiving such notice, give ten days' written notice to such corporation and to the owners or occupants of lands to be affected by any proposed alteration, of the time and place of an application to a justice of the supreme court, in the judicial district where the lands are situated, by petition duly verified, for the appointment of commissioners to examine the route.

The petition shall state the objections to the route designated, shall designate the route to which it is proposed to alter the same, and shall be accompanied with a survey, map and profile of the route designated by the corporation, and of the proposed alteration thereof, and copies thereof shall be served upon the corporation and such owners or occupants with the notice of the application. The justice may, upon the hearing of the application, appoint three disinterested persons, one of whom must be a practical civil engineer, commissioners to examine the route proposed by the corporation, and the route to which it is proposed to alter the same, and after hearing the parties, to affirm the route originally designated, or adopt the proposed alteration thereof, as may be consistent with the just rights of all parties and the public, including the owners or occupants of lands upon the proposed alterations; but no alteration of the route shall be made except by the concurrence of the commissioner who is a practical civil engineer, nor which will cause greater damage or injury to lands or materially greater length of road than the route designated by the corporation, nor which shall substantially change the general line adopted by the corporation.

The commissioners shall, within thirty days after their appointment, make and certify their written determination, which with the petition, map, survey and profile, and any testimony taken before them shall be immediately filed in the office of the county clerk of the county. Within twenty days after such filing, any party may, by written notice to the other, appeal to the general term of the supreme court from the decision of the commissioners, which appeal shall be heard and decided at the next term held in the department in which the lands of the petitioners or any of them are situated, for which the same can be noticed, according to the rules and practice of the court. On the hearing of such

appeal, the court may affirm the route proposed by the corporation or may adopt that proposed by the petitioner.

The commissioners shall each be entitled to six dollars per day for their services, and to their reasonable and necessary expenses, to be paid by the persons who applied for their appointment. If the route of the road, as designated by the corporation, is altered by the commissioners, or by the order of the court, the corporation shall refund to the petitioner the amount so paid, unless the decision of the commissioners is reversed upon appeal taken by the corporation. No such corporation shall institute any proceedings for the condemnation of real property in any county until after the expiration of fifteen days from the service by it of the notice required by this section. Every such corporation shall transmit to the board of railroad commissioners the following maps, profiles and drawings exhibiting the characteristics of their road, to wit:

A map or maps showing the length and direction of each straight line; the length and radius of each curve; the point of crossing of each town and county line, and the length of line of each town and county accurately determined by measurements to be taken after the completion of the road.

Whenever any part of the road is completed and used, such maps and profiles of such completed part shall be filed with such board within three months after the completion of any such portion and the commencement of its operation; and when any additional portion of the road shall be completed and used, other maps shall be filed within the same period of time, showing the additional parts so completed. If the route, as located upon the map and profile filed in the office of any county clerk, shall have been changed, it shall also cause a copy of the map and profile filed in the office of the railroad commissioner, so far as it may relate to the location in such county, to be filed in the office of the county clerk.

¶ As amended chap. 676, Laws 1892.

§ 7. Acquisition of title to real property.--All real property, required by any railroad corporation for the purposes of its incorporation, shall be deemed to be required for a public use. If the corporation is unable to agree for the purchase of any real property, or of any right, interest or easement therein, required for such purpose, or if the owner thereof shall be incapable of

selling the same, or if after diligent search and inquiry the name and residence of such owner cannot be ascertained, it shall have the right to acquire title thereto by condemnation. It shall also have such right in the following cases :

1. Where title to real property has been acquired, or attempted to be acquired, and has been found to be invalid or defective.

2. Where its railroad shall be lawfully in possession of a lessee, mortgagee, trustee or receiver, and additional real property shall be required for the purpose of running or operating such railroad.

3. Where it shall require any further rights to lands or the use of lands for switches, turnouts, or for filling any structures of its road, or for constructing, widening or completing any of its embankments or roadbeds, by means of which greater safety or permanency may be secured, and such lands shall be contiguous to such railroad and reasonably accessible to the place where the same are to be used for such purpose or purposes.

4. Where it shall require any further right to lands or to the use of lands for the flow of water occasioned by railroad embankments or structures now in use, or hereafter rendered necessary, or for any other purpose necessary for the operation of such railroad, or for any right to take and convey water from any spring, pond, creek or river to such railroad, for the uses and purposes thereof, together with the right to build or lay aqueducts or pipes for the purpose of conveying such water, and to take up, relay and repair the same, or for any right of way required for carrying away or diverting any water, stream or floods from such railroad for the purpose of protecting its road or for the purpose of preventing any embankment, excavation or structure of such railroad from injuring the property of any person who may be rendered liable to injury thereby.

Waters commonly used for domestic, agricultural or manufacturing purposes, shall not be taken by condemnation to such an extent as to injuriously interfere with such use in future. No railroad corporation shall have the right to acquire by condemnation any right or easement in or to any real property owned or occupied by any other railroad corporation, except the right to intersect or cross the tracks and lands owned or held for right of way by such other corporation, without appropriating or affecting any lands owned or held for depots or gravel-beds.

As amended chap. 676, Laws 1892.

§ 8. Railroads through public lands.—The commissioners of the land office may grant to any domestic railroad corporation any land belonging to the people of the state, except the reservation at Niagara and the Concourse lands on Coney Island, which may be required for the purposes of its road on such terms as may be agreed on by them; or such corporation may acquire title thereto by condemnation; and the county or town officers having charge of any land belonging to any county or town, required for such corporation for the purpose of its road, may grant such land to the corporation for such compensation as may be agreed upon.

§ 9. Railroads through Indian lands.—Any railroad corporation may contract with the chiefs of any nation of Indians, over whose lands it may be necessary to construct its railroad, for the right to make such road upon such lands, but such contract shall not vest in the corporation the fee to the land, nor the right to occupy the same for any purposes other than may be necessary for the construction, occupancy and maintenance of such railroad, and such contract shall not be valid or effectual until it shall be ratified by the county court of the county where the land shall be situated.

§ 10. Railroads through Chautauqua assembly grounds.—No railroad corporation shall build, construct or operate any railroad in, upon, over or through the grounds, lands or premises owned by the Chautauqua assembly corporation in the town and county of Chautauqua, without the written consent of a majority of the board of trustees of such assembly corporation.

§ 11. Intersection of highways, additional lands for.—No railroad corporation shall erect any bridge or other obstruction across, in or over any stream or lake, navigated by steam or sail boats at the place where it may be proposed to be erected, nor shall it construct its road in, upon or across any street of any city without the assent of the corporation of such city, nor across, upon or along any highway in any town or street in any incorporated village, without the order of the supreme court of the district in which such highway or street is situated, made at a special term thereof, after at least ten days written notice of the intention to make application for such order shall have been given to the commissioners of highways of such town, or board of trustees of the village in which such highway or street is situated. Every railroad corporation which shall build its road along, across or

upon any stream, watercourse, street, highway, plankroad or turnpike, which the route of its road shall intersect or touch, shall restore the stream or watercourse, street, highway, plank-road and turnpike, thus intersected or touched, to its former state, or to such state as not to have unnecessarily impaired its usefulness, it, and any such highway, turnpike or plankroad may be carried by under or over its track, as may be found most expedient. Where an embankment or cutting shall make a change in the line of such highway, turnpike or plankroad desirable, with a view to a more easy ascent or descent, it may construct such highway, turnpike or plankroad, on such new line as its directors may select, and may take additional lands therefor by condemnation if necessary. Such lands so taken shall become part of such intersecting highway, turnpike or plankroad, and shall be held in the same manner and by the same tenure as the adjacent parts of the highway, turnpike or plankroad are held for highway purposes. Every railroad corporation shall pay all damages sustained by any turnpike or plankroad corporation in consequence of its crossing or occupation of any turnpike or plankroad, and in case of inability to agree upon the amount of such damages it may acquire the right to such crossing or occupation by condemnation.

§ 12. Intersection of other railroads.— Every railroad corporation, whose road is or shall be intersected by any new railroad, shall unite with the corporation owning such new railroad in forming the necessary intersections and connections, and grant the requisite facilities therefor. If the two corporations cannot agree upon the amount of compensation to be made therefor or upon the line or lines, grade or grades, points or manner of such intersections and connections, the same shall be ascertained and determined by commissioners, one of whom must be a practical civil engineer and surveyor, to be appointed by the court, as is provided in the condemnation law. Such commissioners may determine whether the crossing or crossings of any railroad before constructed shall be beneath, at, or above the existing grade of such railroad, and upon the route designated upon the map of the corporation seeking the crossing or otherwise. All railroad corporations whose roads are or shall hereafter be so crossed, intersected or joined, shall receive from each other and forward to their destination all goods, merchandise and other property intended for points on their respective roads, with the same dispatch.

as, and at a rate of freight not exceeding the local tariff rate charged for similar goods, merchandise and other property, received at or forwarded from the same point for individuals and other corporations.

As amended, chapter 676, Laws 1892.

§ 13. Change of route, grade or terminus.—Every railroad corporation, except elevated railway corporations, may, by a vote of two-thirds of all its directors, alter or change the route or any part of the route of its road or its termini, or locate such route, or any part thereof, or its termini, in a county adjoining any county named in its certificate of incorporation, if it shall appear to them that the line can be improved thereby, upon making and filing in the clerk's office of the proper county a survey, map and certificate of such alteration or change. If the same is made after the corporation has commenced grading the original route, compensation shall be made to all persons for injury done by such grading to any lands donated to the corporation. But neither terminus can be changed, under this section, to any other county than one adjoining that in which it was previously located; nor can the route or terminus of any railroad be so changed in any town, county or municipal corporation, which has issued bonds and taken any stock or bonds in aid of the construction of such railroad without the written consent of a majority of the taxpayers appearing upon the last assessment-roll of such town, county or municipal corporation, unless such terminus, after the change, will remain in the same village or city as theretofore. No alteration of the route of any railroad after its construction shall be made, or new line or route of road laid out or established, as provided in this section, in any city or village, unless approved by a vote of two-thirds of the common council of the city or trustees of the village. Any railroad corporation whose road as located terminates at any railroad previously constructed or located, whereby communication might be had with any incorporated city of the state, may amend its certificate of incorporation so as to terminate its road at the point of its intersection with any railroad subsequently located to intersect it, and thereby, by itself or its connections, afford communication with such city, with the consent of the stockholders owning two-thirds of the stock of the corporation. Any railroad corporation may, by a vote of its directors, change the grade of any part of its road, except in the city of Buffalo, in such manner as it may deem necessary to

avoid accidents and to facilitate the use of such road; and it may by such vote alter the grade of its road, for such distance and in such manner as it may deem necessary, on each or either side of the place where the grade of its road has been changed by direction of the superintendent of public works, at any point where its road crosses any canal or canal feeder, except in the city of Buffalo. The superintendent of public works shall have a general and supervisory power over that part of any railroad which passes over, or approaches within ten rods of any canal or feeder belonging to the state so far as may be necessary to preserve the free and perfect use of such canals or feeders, or to make any repairs, improvements or alterations, in the same. Any railroad corporation whose tracks cross any of the canals of the state, and the grade of which may be raised by direction of the superintendent of public works, with the assent of such superintendent, may lay out a new line of road to cross such canal at a more favorable grade, and may extend such new line and connect the same with any other line of road owned by such corporation, upon making and filing in the clerk's office of the proper county a survey map and certificate of such new or altered line. No portion of the track of any railroad, as described in its certificate of incorporation, shall be abandoned under this section.

As amended, ch. 676, Laws 1892.

§ 14. Construction of part of line in another state.—

Any railroad corporation, whose proposed railroad is to be built between any two points in this state, may, by a vote of two-thirds of all its directors, locate and construct a part of its road in an adjoining state; and the sections of its road within this state shall be deemed a connected line, according to the certificate of incorporation, and the directors may reduce the capital stock of the corporation to such amount as may be deemed proper, but not less than ten thousand dollars per mile for the number of miles of road to be actually constructed in this state.

§ 15. Two roads having the same location.—If two railroad corporations for a portion of their respective lines embrace the same location of line, or if their lines connect, or are tributary to each other, such corporation may by agreement provide for the construction by one of them of so much of such line as is common to both, or connects with its own line, and for the manner

and terms upon which the business thereon shall be performed, and the corporation that is not to construct the part of the line which is common to both, may amend its certificate of incorporation, and terminate its line at the point of intersection, and may reduce its capital to a sum not less than ten thousand dollars for each mile of road proposed to be constructed in such amended certificate.

§ 16. Tunnel railroads.—When, according to the route and plan of the building of its road, adopted by any railroad corporation, including corporations organized under chapter one hundred and forty of the laws of eighteen hundred and fifty, and the acts amendatory thereof, and supplementary thereto, it shall be necessary or proper to build it or any part of it underground, or to tunnel or bridge any river or waters, such corporation may enter upon, acquire title to and use such lands under water and uplands, except on or along any canals of the state, as shall be necessary for the purposes herein mentioned, and may construct, erect and secure the necessary foundations and other structures which may be required for operating and maintaining such road, or connecting the same with another, and to acquire, in the manner provided by law, such lands or rights or easements in lands along its route, upon, over or beneath the surface thereof as may be necessary for the construction of its road and making such connections. Where such road runs underneath the ground, at such depth as to enable the corporation to tunnel the same, such tunnel shall be so built and at all times kept in such condition as to make the surface of the ground above the same and in the neighborhood thereof firm and safe for buildings and other erections thereon, and if surface excavations are made, the surface shall be restored to its former condition as soon as can be done, except so far as may be actually required for ventilation of the tunnel beneath the same or access thereto. Such road or any part of it may be built within the limits of any city or incorporated village of this state, and run by means of a tunnel underneath any of the streets, roads or public places thereof, provided, such corporation shall before constructing the same underneath any such street, road or public place, have obtained the consent of the owners of one-half in value of the property bounded on the line of such street, road or public place, and the consent of the board of trustees of the village, by a resolution adopted at a

regular meeting and entered on the records of the board, or of the proper authorities of the city having control of such streets, roads or public places. If the consent of such property owners cannot be obtained, the general term of the supreme court in the district in which said city or village or any part thereof is situated, may upon application appoint three commissioners, who shall determine, after a hearing of all parties interested, whether such railroad ought to be built underneath such streets, roads or public places, or any of them, and in what manner the same may be so built with the least damage to the surface and to the use of the surface by the public and the determination of the commissioners confirmed by the court may be taken in lieu of the consent of the property owners. All railroad corporations constructing their road under this section shall be subject to all the provisions of this chapter applicable thereto. Any other railroad corporation may connect its road therewith, at such points or places as it may elect, and where such connections shall be made by connecting roads, the railroad corporations owning such roads shall build, at their joint expense, and for their joint use, such passenger and freight depots, and other accommodations for handling passengers and freight, as may be required for the convenience of the public. All railroad corporations, constructing any tunnel under this section shall be liable to any person or corporation for all damages which may be sustained by reason of the construction of such tunnel. Whenever it shall be necessary in constructing any railroad authorized by this section through any city or incorporated village, to alter the position or course of any sewer, or water or gas pipes, it shall be done at the expense of the railroad corporation under the direction of the department or corporation having charge thereof, so as not to interfere with such work. In all cases the use of streets, docks and lands beneath which such railroad is constructed, and on the route thereof and the right of way beneath the same, for the purpose of such railroad, shall be considered, and is hereby declared, a public use, consistent with and one of the uses for which streets and docks are publicly held. No public park or square in any city or village of this state shall be used or occupied by any corporation for any of the purposes of this section, and every road constructed hereunder in or through any such street or public place shall be wholly underground and constructed in a tunnel and not otherwise, but nothing in this section

shall apply to the county of Kings nor shall operate to revive any charter or franchise heretofore granted by or in the city of Brooklyn.

As amended chap. 667 and 702, Laws 1892.

§ 17. Railroads in foreign countries.—A railroad corporation may be formed under this chapter for the purpose of constructing, maintaining and operating in any foreign country a railroad for public use in the transportation of persons and property, or for the purpose of maintaining and operating therein any railroad already constructed, in whole or in part, for the like public use, and of constructing, maintaining and operating, in connection therewith, telegraph lines and lines of steamboats or sailing vessels. Any corporation formed for the construction and operation of a railroad by stationary power, may construct, operate and maintain a railroad in any other state or country, if not in conflict with the laws thereof, but the assent of the inventors or patentees of the method of propulsion used must be first obtained in the same manner and to the same extent as would be necessary within the United States.

As amended, chap. 676, Laws 1892.

§ 18. Additional corporate powers of such road.—The corporation specified in the preceding section shall have the following additional powers:

1. To expend money in making preliminary examinations and surveys for its proposed railroad telegraph lines, and lines of steamboats and sailing vessels, and in acquiring from foreign countries, nations or governments, the grants, concessions and privileges herein authorized.

2. To take and receive from foreign countries, nations and governments, such grants, concessions or privileges, for the construction, acquisition, maintenance and operation of railroads, telegraph lines and vessels, as may be consistent with the purposes of the corporation, and as may be granted and conceded to it, and to hold the same, under such restrictions and with such duties and liabilities as may be fixed by the laws of such foreign country, nation or government, or as may be annexed to such grants or concessions.

3. To construct, acquire, maintain and operate the lines of railroads, telegraph and shipping provided for by its certificate of in-

* So in the original.

corporation, and to take and hold by purchase or by voluntary grant such real estate and other property in foreign countries as may be necessary and convenient for the construction, maintenance and accommodation of such lines, and to sell, convey, mortgage or lease such real estate or other property; and to acquire by purchase or otherwise any railroad or lines of telegraph constructed or in process of construction in any foreign country, and any grants, concessions, franchises, rights, privileges and immunities relating thereto, and to mortgage or sell and convey the same, or any part of its property to any person or corporation created by this or any other state or foreign government, subject to the laws of the country or countries where such property may be, and the power of sale hereby granted shall be exercised only by a majority of the entire board of directors of the corporation, with the written concurrence of the holders of two-thirds in amount of its capital stock.

4. To take and convey persons and property on its transportation lines by the power or force of steam or of animals, or by mechanical or other power, and receive compensation therefor subject to the laws of the place or country where the same are situated.

5. To acquire and use such real estate and other property in this state as may be necessary in the conduct of its business, but the value of such real estate held at any one time shall not exceed the sum of one million dollars.

§ 19. Location of principal office of such road.—Every such corporation shall maintain its principal office within this state and shall have during business hours, an officer or agent upon whom service of process may be made, and shall hold in his state at least one meeting of the stockholders in each year for the choice of directors, which shall be known as the annual meeting and be held at the time and place fixed by the by-laws of the corporation.

As amended ch. 676, Laws 1892.

§ 20. Individual, joint stock association, or other corporation may lay down and maintain railroad tracks in certain cases.—Any individual joint stock association or corporation, engaged in any lawful business in this state, may, except in any city of the state, lay down and maintain such railroad tracks on or across any street or highway, not exceeding three

miles in length, as shall be necessary for the transaction of its business, and to connect any place of business owned by them with the track of any railroad corporation, and render such place business more accessible to the public, upon obtaining the written consent of the owners of all the lands bounded on and of the local authorities having control of that portion of the street or highway, upon which it is proposed to construct or operate such railroad. If the consent of such property owners cannot be obtained, the general term of the supreme court of the department in which such railroad is to be constructed, may upon application, appoint three commissioners, who shall determine, after a hearing of all parties interested, whether such railroad ought to be constructed or operated, and the amount of damages, if any, to be paid to such property owners, and their determination confirmed by the court may be taken in lieu of the consent of the property owners. But no such railroad shall be so located, graded, built or operated as to interfere with or obstruct the traveled part of any highway, or its use as a highway, or the use of any street or highway intersecting the same.

§ 21. When electric light and power corporation may become a railroad corporation.—When all the stockholders of any domestic electric light and power company incorporated under a general law, having not less than five stockholders and actually carrying on business in this state, shall execute and file in the offices in which its original certificates of incorporation are filed an amended certificate of incorporation complying in every other respect than as to the number of signers and directors, who shall be not less than five, with the provisions of the railroad law, and in which certificate the corporate name of such corporation shall be amended by adding before the word “company” in its corporate name the words “and railroad,” such corporation shall have the right to build, maintain and operate by electricity as a motive power a railroad not exceeding twenty miles in length, and not a street surface railroad, and such corporation shall otherwise be subject to all the provisions of this chapter and have all the powers, rights and privileges conferred by it upon railroad corporations.

This section shall not apply to any railroad now located in whole or in part or hereafter to be so located in any city of the state.

As added by ch. 676, Laws 1892.

By a subsequent chapter another section 21 was added to the railroad law reading as follows:

§ 21. Any corporation, whose railroad is or shall be not longer than sixteen miles and is or shall be in part intended for or used in summer travel or the convenience of summer sojourners need not operate its road beyond the months of June, July, August and September, inclusive. The motive power may be electricity. If the road be no longer than ten miles, such corporation may fix and collect fare for transporting each passenger, together with ordinary baggage, if any, not to exceed fifteen cents for each mile and fraction thereof.

Ch. 700, Laws 1892.

ARTICLE II.

CONSTRUCTION, OPERATION AND MANAGEMENT.

SECTION 30. Liability of corporation to employes of contractor.

31. Weight of rail.
32. Fences, farm-crossings and cattle-guards.
33. Sign-boards and flagmen at crossings.
34. Notice of starting trains; no preferences.
35. Accommodation of connecting roads.
36. Locomotives must stop at grade crossings.
37. Rates of fare.
38. Legislature may alter or reduce fare.
39. Penalty for excessive fare.
40. Passengers refusing to pay fare may be ejected.
41. Extra fare for sleeping car.
42. Persons employed as drivers and conductors.
43. Conductors and employes must wear badges.
44. Checks for baggage.
45. Penalties for injury to baggage.
46. Unclaimed freight and baggage.
47. Tickets and checks for connecting steamboats.
48. Rights and liabilities as common carriers.
49. Duties imposed.
 1. Switches.
 2. Warning signals.
 3. Guard posts.
 4. Automatic couplers.
 5. Automatic or other safety brake.
 6. Tools in passenger cars.
 7. Water.
50. Railroad commissioners may approve other safeguards.
51. Use of stoves or furnaces prohibited.
52. Canada thistles to be cut.
53. Riding on platform; walking along track.
54. Corporations may establish ferries.

55. Certain railroads may cease operations in winter.
56. Mails.
57. Corporations must make annual report.
58. When conductors and brakemen may be policemen.
59. Requisites to exercises of powers of future railroad corporation.

SECTION 30. Liability of corporation to employes of contractor.—An action may be maintained against any railroad corporation by any laborer for the amount due him from any contractor for the construction of any part of its road, for ninety or any less number of days' labor performed by him in constructing such road, if within twenty days thereafter a written notice shall have been served upon the corporation, and the action shall have been commenced after the expiration of ten days and within six months after the service of such notice, which shall contain a statement of the month and particular days upon which the labor was performed and for which it was unpaid, the price per day, the amount due, the name of the contractor from whom due, and the section upon which performed, and shall be signed by the laborer or his attorney and verified by him to the effect that of his own knowledge the statements contained in it are true. The notice shall be served by delivering the same to an engineer, agent or superintendent leaving charge of the section of the road, upon which the labor was performed, personally, or by having it at his office or usual place of business with some person of suitable age or discretion; and if the corporation has no such agent, engineer or superintendent, or in case he cannot be found and has no place of business open, service may in like manner be made on any officer or director of the corporation.

31. Weight of rail.—The rail used in the construction or the relaying of the track of every railroad hereafter built or relaid in whole or in part shall be of iron or steel, weighing not less than twenty-five pounds to the lineal yard on narrow gauge roads, and on all other roads not less than fifty-six pounds to the lineal yard on grades of one hundred and ten feet to the mile or under, and not less than seventy pounds to the lineal yard on grades of over one hundred and ten feet to the mile, except for turnouts, sidings and switches.

§ 32. Fences, farm-crossings and cattle-guards.—Every railroad corporation, and any lessee or other person in possession of its road, shall, before the lines of its road are opened for use,

and so soon as it has acquired the right of way for its roadway erect and thereafter maintain fences on the sides of its road of height and strength sufficient to prevent cattle, horses, sheep and hogs from going upon its road from the adjacent lands with farm crossings and openings with gates therein at such farm crossings whenever and wherever reasonably necessary for the use of the owners and occupants of the adjoining lands, and shall construct where not already done, and hereafter maintain, cattle-guards at all road crossings, suitable and sufficient to prevent cattle, horses, sheep and hogs from going upon its railroad. So long as such fences are not made, or are not in good repair, the corporation, its lessee or other person in possession of its road, shall be liable for all damages done by their agents or engines or cars to any domestic animals thereon. When made and in good repair, they shall not be liable for any such damages, unless negligently or willfully done. A sufficient post and wire fence of requisite height shall be deemed a lawful fence within the provisions of this section, but barbed wire shall not be used in its construction.

No railroad need be fenced, when not necessary to prevent horse, cattle, sheep and hogs from going upon its track from the adjoining lands. Every adjoining land owner, who, or whose grantor, has received compensation for fencing the line of land taken for a railroad, and has agreed to build and maintain a lawful fence along such line, shall build and maintain such fence. If such owner, his heir or assign shall not build such fence, or if built, shall neglect to maintain the same during the period of thirty days after he has been notified so to do by the railroad corporation, such corporation shall thereafter build and maintain such fence, and may recover of the person neglecting to build and maintain it the expense thereof. And when such railroad shall cross timbered or forest lands, the company shall construct and maintain suitable and sufficient crossings, whenever and wherever reasonably necessary to enable the respective owners of said lands, to transport logs, timber and lumber for manufacture or sale, or for banking on any stream, to be floated or driven down the same. In case of any neglect or dispute the supreme court may by mandamus or other appropriate proceedings, compel the same, and also fix the point or location of any such crossing.

As amended ch. 676, Laws 1892.

§ 33. Sign boards and flagmen at crossings.—Every railroad corporation shall cause boards to be placed, well supported and constantly maintained across each traveled public road or street, where the same is crossed by its road at grade. They shall be elevated so as not to obstruct travel, and to be easily seen by travelers ; and on each side shall be painted in capital letters, each at least nine inches in length and of suitable width, the words : “ Railroad crossing ; look out for the cars ; ” but such boards need not be put up in cities and villages, unless required by the officers having charge of the streets. At any point where a railroad crosses a street, highway, turnpike, plank-road, or traveled way at grade, or where a steam railroad crosses a horse railroad at grade, and the corporation owning or operating such railroad refuses, upon request of the local authorities, to station a flagman or erect gates, to be opened and closed when an engine or train passes, the supreme court, or the county court, may, upon the application of the local authorities and upon ten days notice to the corporation, order that a flagman be stationed at such point, or that gates shall be erected thereat, and that a person be stationed to open and close them when an engine or train passes, or may make such other order respecting the same as it deems proper. Whenever the crossings by a railroad at grade of the streets, highways, turnpikes, plankroads, or traveled ways of any village or city, having a population, by the last state or federal enumeration, of less than fifty thousand, shall be protected by gates with persons to open and close the same when an engine or train passes, the local authorities of the city or village shall not impose any limitation, less than forty miles an hour, on the rate of speed at which such engine or train shall be run, or enforce any existing limitation upon such rate of speed, less than forty miles an hour.

As amended 1891, ch. 367, and ch. 676, Laws 1892.

§ 34. Notice of starting trains ; no preferences. — Every railroad corporation shall start and run its cars for the transportation of passengers and property at regular times, to be fixed by public notice, and shall furnish sufficient accommodations for the transportation of all passengers and property which shall be offered for transportation at the place of starting, within a reasonable time previously thereto, and at the junctions of other railroads, and at the usual stopping places established for receiving and discharging way passengers and freight for that train ; and shall take, trans-

port and discharge such passengers and property at, from and to, such places, on the due payment of the fare or freight legally authorized therefor. No station established by any railroad corporation for the reception or delivery of passengers or property, or both, shall be discontinued without the consent of the board of railroad commissioners first had and obtained. No preference for the transaction of the business of a common carrier upon its cars, or in its depots or buildings, or upon its grounds, shall be granted by any railroad corporation to any one or two or more persons, associations or corporations competing in the same business, or in the business of transporting property for themselves or others. Any such station in an incorporated village shall have the same name as the village; if any road shall have more than one such station in any such village, the station nearest the geographical centre thereof shall have such name.

As amended ch. 676, Laws 1892.

§ 35. Accommodation of connecting roads.—Every railroad corporation whose road, at or near the same place, connects with or is intersected by two or more railroads competing for its business, shall fairly and impartially afford to each of such connecting or intersecting roads equal terms of accommodation, privileges and facilities in the transportation of cars, passengers, baggage and freight over and upon its roads and over and upon their roads, and equal facilities in the interchange and use of passenger, baggage, freight and other cars required to accommodate the business of each road, and in furnishing passage tickets to passengers who may desire to make a continuous trip over any part of its roads and either of such connecting roads. The board of railroad commissioners may, upon application of the corporation owning or operating either of the connecting or intersecting roads, and upon fourteen days' notice to the corporation owning or operating the other road, prescribe such regulations as will secure, in their judgment, the enjoyment of equal privileges, accommodations and facilities to such connecting or intersecting roads as may be required to accommodate the business of each road, and the terms and conditions upon which the same shall be afforded to each road. The decision of the commissioners shall be binding on the parties for two years, and the supreme court shall have power to compel the performance thereof by attachment, mandamus, or otherwise.

§ 36. Locomotives must stop at grade crossings.—All trains and locomotives on railroads crossing each other at grade shall come to a full stop before crossing, not less than two hundred or more than eight hundred feet from the crossing, and shall then cross only when the way is clear and upon a signal from a watchman stationed at the crossing. If the corporation cannot agree as to the expense of the watchman, it shall be determined by the supreme court, upon motion thereto by either of them. If the corporations disagree as to the precedence of trains, the board of railroad commissioners may, after hearing, upon the application of either corporation, prescribe rules in relation thereto. The full stop and crossing on signal may be discontinued if the board of railroad commissioners shall decide it to be impracticable, or if, with the approval of the commissioners, an interlocking switch and signal apparatus is adopted and put in operation at such a crossing. The full stop and crossing on signal shall not be required in depot yards, or the approaches thereto, if the crossing roads are under lease or subject to the same management or control in the use of tracks. An engineer, violating the foregoing provisions of this section, or any such rule of the railroad commissioners shall be liable to a penalty of one hundred dollars; and any corporation or person operating the railroad violating any of such provisions or rules shall be liable to a penalty of five hundred dollars. No railroad corporation, or any officer, agent or employe thereof, shall stop its cars, horses, or locomotives upon a grade crossing of a railroad of another corporation, for the purpose of receiving or delivering passengers or freight, or other purpose, and any person or corporation violating this provision, shall be liable to a penalty of two hundred and fifty dollars.

§ 37. Rates of fare.—Every railway corporation may fix and collect the following rates of fare as compensation to be paid for transporting any passenger and his baggage, not exceeding one hundred and fifty pounds in weight, for each mile or fraction of a mile.

1. Where the motive power is rope or cable, propelled by stationary power, five cents, with right to a minimum fare of ten cents; but if the railroad is less than two miles in length, and overcome an elevation of five hundred feet or more to the mile, five cents for each one hundred feet of elevation so overcome, and the same rates of fare if the motive power is locomotives, furn-

ished with cogs working into cogs on the railway, and the length of road does not exceed four miles.

2. If a road, not incorporated prior to May 15, 1879, and not located in the counties of New York and Kings, or within the limits of any incorporated city, and not more than twenty-five miles in length, five cents; if over twenty-five and not more than forty miles, four cents; and if over forty miles, three cents. Where by the laying down of a third rail upon a railroad of the ordinary gauge, a narrow-gauge track is created and used for the transportation of passengers, and the length of road does not exceed six miles, including any connecting road of the same gauge, such railroad, for the purpose of fare, shall be deemed a narrow gauge road.

3. If its railroad overcomes an elevation of two hundred feet to the mile, for at least two consecutive miles, and does not exceed twenty miles in length, ten cents; if it overcomes an elevation exceeding three hundred feet to the mile, within a distance of two miles, five cents for each one hundred feet of elevation; and where it overcomes an elevation of more than one thousand feet, within a distance of two miles, seven cents for each one hundred feet of elevation in a mile.

4. If the line of its road does not exceed fifteen miles in length, and does not enter or traverse the limits of any incorporated city, and the distance traveled thereon by the passenger does not exceed one mile, five cents.

5. In all other cases, three cents for every such mile or fraction thereof, with a right to a minimum single fare of not less than five cents.

This chapter shall not be construed to allow any rate of fare for way passengers greater than two cents per mile to be charged or taken over the track or tracks of the railroad known as the New York Central Railroad Company, and the rate of fare for way passengers over the track or tracks of such company shall continue to be two cents per mile and no more, wherever it is restricted to that rate of fare, nor shall any consolidated railroad corporation charge a higher rate of fare per passenger per mile, upon any part or portion of the consolidated line than was allowed by law to be charged by each existing corporation thereon previously to such consolidation.

As amended, chapter 676, Laws 1892.

§ 38. **Legislature may alter or reduce fare.**—The legislature may, when any such railroad shall be opened for use, from time to time, alter or reduce the rate of reight, fare or other profits upon such road; but the same shall not, without the consent of the corporation, be so reduced as to produce with such profits less than ten per centum per annum on the capital actually expended; nor unless on an examination of the amounts received and expended, to be made by the board of railroad commissioners they shall ascertain that the net income derived by the corporation from all sources, for the year then last past, shall have exceeded an annual income of ten per cent upon the capital of the corporation actually expended.

§ 39. **Penalty for excessive fare.**—Any railroad corporation which shall ask or receive more than the lawful rate of fare, unless such overcharge was made through inadvertence or mistake, not amounting to gross negligence, shall forfeit fifty-dollars, to be recovered with the excess so received by the party paying the same; but no action can be maintained therefor, unless commenced within one year after the cause of action accrued.

§ 40. **Passenger refusing to pay fare may be ejected.**—If any passenger shall refuse to pay his fare the conductor of the train, and the servants of the corporation, may put him and his baggage out of the cars, using no unnecessary force, on stopping the train, at any usual stopping place, or near any dwelling house, as the conductor may elect.

§ 41. **Sleeping and parlor cars.**—Any railroad corporation may contract with any person, association or corporation for the hauling by the special or regular trains of said railroad corporation, the parlor, drawing-room or sleeping car or cars of such person, association or corporation in which extra accommodation shall be furnished, for which said person, association or corporation furnishing such parlor, drawingroom or sleeping car or cars, may charge for the carriage and transportation of persons and property therein, a reasonable compensation for such extra accommodation, in addition to the fare and charges now allowed by law for the carriage and transportation of passengers and property in the ordinary cars of said railroad corporation. But said railroad corporation so contracting shall be liable in the same way and to the same extent as if the said car or cars were owned by

it, and shall furnish sufficient ordinary cars for the reasonable accommodation of the traveling public.

As amended ch. 676, Laws 1892.

42. Persons employed as drivers and conductors.—Any railroad corporation may employ any inhabitant of the state, of the age of twenty-one years, not addicted to the use of intoxicating liquors, as a car driver or conductor, or in any other capacity, if fit and competent therefor.

§ 43. Conductors and employes must wear badges.—Every conductor and employe of a railroad corporation employed in a passenger train, or at stations for passengers, shall wear upon his hat or cap a badge, which shall indicate his office or employment, and the initial letters of the corporation employing him. No conductor or collector without such badge shall demand or receive from any passenger any fare or ticket or exercise any of the powers of his employment. No officer or employe without such badge shall meddle or interfere with any passenger, his baggage or property.

As amended ch. 676, Laws 1892.

§ 44. Checks for baggage.—A check, made of some proper metallic substance of convenient size and form, plainly stamped with numbers, and furnished with a convenient strap or other appendage for attaching to baggage, shall be affixed to every piece or parcel of baggage when taken for transportation for a passenger by the agent or employe of such corporation, if there is a handle, loop or fixture therefor upon the piece or parcel of baggage, and a duplicate thereof given to the passenger or person delivering the same to him. If such check be refused on demand the corporation shall pay to the passenger the sum of ten dollars, and no fare shall be collected or received from him; and if he shall have paid his fare it shall be refunded to him by the conductor in charge of the train. Such baggage shall be delivered, without unnecessary delay, to the passenger or any person acting in his behalf at the place to which it was to be transported, where the cars usually stop, or at any other regular intermediate stopping place, upon notice to the baggage-master in charge of baggage on the train, of not less than thirty minutes, upon presentation of such duplicate check to the officer or agent of the railroad

corporation, or of any corporation over any portion of whose road it was transported.

As amended ch. 676, Laws 1892.

§ 45. Penalties for injuries to baggage.—Any person whose duty it is for or on behalf of the common carrier to handle, remove, or care for the baggage of passengers, who shall recklessly or willfully injure or destroy any trunk, valise, box, bag, package or parcel, while loading, unloading, transporting, delivering or storing the same, or any railroad corporation, which shall knowingly keep in its employment any such willful or reckless person, or which shall permit any injury or destruction of such property, through failure to provide sufficient help and facilities for the handling thereof, shall pay to the party injured thereby the sum of fifty dollars, in addition to such damages.

§ 46. Unclaimed freight and baggage.—Every railroad or other transportation corporation, doing business in this state, which shall have unclaimed freight or baggage, not perishable, in its possession for the period of one year, may sell the same at public auction, after giving notice to that effect, once a week for not less than four weeks, in a newspaper published in the county where the freight or baggage remains unclaimed, and in a newspaper published in the county where the sale is to be had, and in a newspaper published in the city of New York, which notice shall contain, as near as practicable, a description of such freight or baggage, the place and time when left, and the name of the owner, if known. A copy of such notice shall be posted in a conspicuous place at each depot or station, where any portion of such freight or baggage remains unclaimed, at least four weeks before such sale, and a copy thereof shall be served on the comptroller of the state, at least two weeks before such sale. If the name and residence of the owner of any such property is known to, or can be ascertained by the corporation, it shall forthwith serve a copy of such notice upon such owner by mail. Perishable freight or baggage may be sold without notice, as soon as it can be, upon the best terms that can be obtained. All moneys arising from the sale of such freight or baggage, after deducting therefrom charges and expenses for transportation, storage, advertising, commissions for selling the property, and any amount previously paid for its loss or non-delivery, shall be deposited by the corporation making such sale, with a report thereof, and proofs of advertisement, if

any, and if none, proofs that the property was perishable, with the comptroller for the benefit of the general fund of the state, and shall be held by him in trust for reclamation by the persons entitled to receive the same.

As amended, ch. 676, Laws 1892.

§ 47. Tickets and checks for connecting steamboats.—

The proprietors of any line of steamboats, terminating or stopping for passengers at any place where a railroad corporation has depot or station, may furnish tickets and baggage checks to such corporation for the use of passengers, traveling over its road, who desire to connect with such line of boats at any such place, and the railroad corporation shall sell such tickets and deliver a duplicate of one of such checks to any such passenger applying therefor, and shall account for and pay over to the proprietor of such line of boats all moneys received by it for the sale of such tickets and any such railroad corporation may furnish tickets and check for baggage to the proprietors of any such line of steamboats for the use of passengers traveling over any part of such line of boats, who desire to connect with the railroad of any such corporation at any such place, and such proprietors shall sell such tickets and deliver a duplicate of one of such checks to any such passenger applying therefor, and shall account for and pay over to such corporation all moneys received by them for the sale of such tickets. No greater rate of fare shall be charged by any railroad corporation to any such passenger for the distance traveled over its road than is charged to travelers for the same distance whose trip ends at the place where connection is made with any such line of boats, and no greater rate of fare shall be charged by the proprietors of any such steamboat line to any such passenger for the distance traveled over its line, than is charged to travelers for the same distance whose trip ends at the place where connection is made with any such railroad. Any additional cost of transfer of a passenger or his baggage from railroad depot or station to steamboat landing, or from steamboat landing to depot or station, shall be borne by the passenger or the proprietors of the steamboat line or the railroad corporation at whose instance or for whose benefit such transfer is made. Every railroad corporation and the proprietors of any line of steamboats their agents or servants, who shall neglect or refuse to sell ticket or furnish a check to any passenger applying for the same, when

the same shall have been furnished to them, shall pay to such passenger the sum of ten dollars, and no fare or toll shall be collected from him for riding over such road or upon such boats, as the case may be; and in addition thereto any railroad corporation so neglecting or refusing, shall pay the proprietors of such line of boats two hundred and fifty dollars for each day it shall so neglect or refuse; and the proprietors of any such line of boats so neglecting or refusing, shall pay to such railroad corporation a like sum for each day they shall so neglect or refuse.

Every such railroad corporation shall also receive any freight which shall be delivered at any station on the line of its road, marked to go by way of boat or any particular line of boats from any station on its road at which such boat or line of boats terminates or stops for freight, and shall transport such freight with all convenient speed to such station, and on its arrival there cause the proprietors of the steamboat line by which it is directed to be sent, or their agent, to be notified of such arrival, and shall deliver such freight to such proprietors or their agent with the bill of charges thereon due such railroad corporations, for the payment of which charges the proprietor or proprietors of such steamboat line shall be responsible, and shall account for and pay the same to such railroad corporation on demand. The railroad corporation shall not charge for the transportation of such freight over its road any greater sum pro rata than it charges for carrying the same kind of freight the same distance over its road, if it was to be transported by such corporation by rail to its final destination, or to the terminus of the road of such corporation in case it terminates before such final destination is reached. Any freight delivered by the proprietors of any steamboat or steamboat line, or their authorized agent, at any station, at a place where such steamboat or steamboats have a landing, to any such railroad corporation, for transportation over its road or any part thereof, shall be transported by such corporation to its place of destination for the same price pro rata which would be charged for the same kind of freight the same distance over its road, if the same had been taken on at the point of first shipment by boat, or at the terminus of the road of such corporation, in case it does not extend to the point of first shipment.

§ 48. Rights and liabilities as common carriers.—Every railroad corporation doing business in this state shall be a common

carrier. Any one of two or more corporations owning or operating connecting roads, within this state, or partly within and partly without the state, shall be liable as a common carrier, for the transportation of passengers or delivery of freight received by it to be transported by it to any place on the line of a connecting road; and if it shall become liable to pay any sum by reason of neglect or misconduct of any other corporation it may collect the same of the corporation by reason of whose neglect or misconduct it became liable.

As amended ch. 676, Laws 1892.

49. Switches; warning signals; guard-posts; automatic couplers; automatic or other safety brake; tools in passenger car; water.—It shall be the duty of every railroad corporation operating its road by steam:

1. To lay, in the construction of new and in the renewal of existing switches, upon freight or passenger main line tracks, switches on the principle of either the so-called Tyler, Wharton, Lorenze, or split-point switch, or some other kind of safety switch, which shall prevent the derailment of a train, when such switch is misplaced or a switch interlocked with distant signals.

2. To erect and thereafter maintain such suitable warning signals at every road, bridge, or structure which crosses the railroad above the tracks, where such warning signals may be necessary, for the protection of employes on top of cars from injury.

3. To place guard-posts in the prolongation of the line of bridge trusses, so that in case of derailment, the posts, and not the bridge trusses, shall receive the blow of the derailed locomotive or car.

4. To use upon every new freight car, built or purchased for use, couplers which can be coupled and uncoupled automatically, without the necessity of having a person guide the link, lift the pin by hand, or go between the end of the cars.

5. To attach to every car used for passenger transportation an automatic air-brake or other form of safety-power brake, applied from the locomotive, excepting cars attached to freight trains, the schedule rate of speed of which does not exceed twenty miles an hour.

6. To provide each closed car, in use in every passenger train owned or regularly used upon a railroad, with one set of tools, consisting of an axe, sledge-hammer, crow-bar, and handsaw, to be properly placed so as to be easily removed.

7. To provide, in each passenger car, where the line of road shall exceed forty continuous miles in length, a suitable receptacle for water, with a cup or drinking utensil attached upon or near such receptacle, and to keep such receptacle, while the car is in use, constantly supplied with cool water. •

Every corporation, person or persons, operating such railroad, and violating any of the provisions of this section, except subdivision seven, shall be liable to a penalty of one hundred dollars for each offense, and the further penalty of ten dollars for each day that it shall omit or neglect to comply with any of such provisions. For every violation of the provisions of the seventh subdivision of this section every such corporation shall be liable to a penalty of twenty-five dollars for each offense.

§ 50. Railroad commissioners may approve other safeguards.—The board of railroad commissioners may, on the application of any railroad corporation, authorize it to use any other safeguard or device approved by the board, in place of any safeguard or device required by this article, which shall thereafter be used in lieu thereof, and the same penalties for neglect or refusal to use the same shall be incurred and imposed as for a failure to use the safeguard or device hereinbefore required, in lieu of which the same is to be used.

§ 51. Use of stoves or furnaces prohibited.—It shall not be lawful for any railroad corporation, operating a steam railroad in this state, of the length of fifty miles or more, excepting foreign railroads corporations, incorporated without the jurisdiction of the United States, running cars upon tracks in this state for a distance of less than thirty miles, to heat its passenger cars, on other than mixed trains, except dining-room cars, by any stove or furnace kept inside the car, or suspended therefrom, unless in case of accident or other emergency, when it may temporarily use such stove or furnace with necessary fuel, and in cars which have been equipped with apparatus to heat by steam, hot water or hot air from the locomotive, or from a special car, the present stove may be retained to be used only when the car is standing still, and no stove or furnace shall be used in any dining-room car, except for cooking purposes, and of a pattern and kind to be approved by the railroad commissioners. Any person or corporation, violating any of the provisions of this section, shall be liable to a penalty of one thousand dollars, and to the further penalty of

one hundred dollars for each and every day during which such violation shall continue.

§ 52. Canada thistles to be cut.—Every railroad corporation doing business within this state, shall cause all Canada thistles, white and yellow daisies and other noxious weeds growing on any lands owned or occupied by it, to be cut down twice in each and every year, once between the fifteenth day of June and the twenty-fifth day of June, and once between the fifteenth day of August and the twenty-fifth day of August. If any such corporation shall neglect to cause the same to be so cut down, any person may cut the same, between the twenty-fifth day of June and the fifth day of July inclusive, and between the twenty-fifth day of August and the fifth day of September inclusive, in each year, at the expense of the corporation on whose lands the same shall be so cut, at the rate of three dollars per day for the time occupied in cutting.

§ 53. Riding on platform; walking along track.—No railroad corporation shall be liable for any injury to any passenger while on the platform of a car, or in any baggage, wood or freight car, in violation of the printed regulations of the corporation, posted up at the time in a conspicuous place inside of the passenger cars, then in the train, if there shall be at the time sufficient room for the proper accommodation of the passenger inside such passenger cars. No person other than those connected with or employed upon the railroad shall walk upon or along its track or tracks, except where the same shall be laid across or along streets or highways, in which case he shall not walk upon the track unless necessary to cross the same. Any person riding, leading or driving any horse or other animal upon any railroad, or within the fences or guards thereof, other than at a farm or street or forest crossing, without the consent of the corporation, shall forfeit to the people of the state the sum of ten dollars, and pay all damages sustained thereby to the party aggrieved.

As amended ch. 676, Laws 1892.

§ 54. Corporations may establish ferries.—Any steam railroad corporation, incorporated under the Laws of this state, with a terminus in the harbor of New York, may purchase or lease boats propelled by steam or otherwise, and operate the same as a ferry or otherwise, over the waters of the harbor of

New York, but this section shall not be construed to affect the rights of the cities of New York and Brooklyn.

As amended ch. 676, Laws 1892.

§ 55. Certain railroads may cease operation in winter.—

The directors of any railroad corporation operating a railroad, constructed and used principally for transporting lumber or ores, during the summer months, or for summer travel, may, by a resolution duly passed at a meeting thereof, apply to the board of railroad commissioners for permission to cease the operation of their road during the winter season, for a period, not exceeding seven months in any one year, specifying the date of such suspension, and the date of the reopening thereof; and such board may in their discretion, make an order granting the application wholly or in part, and thereupon such railroad corporation shall be relieved of the duty of operating its road during the period specified in the order. A copy of such order shall be posted in all the depots and at the termini of such railroad, and published in every newspaper in each town in any part of which such road shall be constructed at least four weeks prior to the date of such suspension.

§ 56. Mails.—Any railroad corporation shall, when applied to by the postmaster-general, convey the mails of the United States on its road, and in case such corporation and the postmaster general shall not agree as to the rate of transportation therefor, and as to time, rate of speed, manner and condition of carrying the same, the board of railroad commissioners shall fix the prices, terms and conditions therefor, after giving the corporation reasonable opportunity to be heard. Such price shall not be less for carrying such mails in the regular passenger trains than the amount which such corporation would receive as freight on a like weight of merchandise transported in their merchandise trains, and a fair compensation for the post-office car. If the postmaster-general shall require the mail to be carried at other hours, or at higher speed than the passenger trains are run, the corporation shall furnish an extra train for the mail, and be allowed an extra compensation for the expenses and wear and tear thereof, and for the service to be fixed as herein provided.

Every railroad corporation refusing or neglecting to comply with any provision of this section shall forfeit to the people of the state one hundred dollars for every day such neglect or refusal continues.

As amended, ch. 676, Laws 1892.

§ 57. Corporations must make annual report.—Every person or corporation owning, leasing, operating or in possession of a railroad, wholly or partly, in this state, shall make an annual report to the board of railroad commissioners of its operations for the year ending with June thirtieth, and of its condition on the day which shall be verified by the oaths of the president, or treasurer, and the general manager, or acting superintendent, and shall be filed in the office of such board on or before September first in each year. Every such person or corporation shall make quarterly and further reports to such board in the form and within the time prescribed by it. Such board may in its discretion change the date of the annual report and of filing the same, but the length of time between the date of the annual report and the filing of the same shall not be less than herein prescribed. Any person or railroad corporation which shall neglect to make any such report, or which shall fail to correct any such report within ten days after notice by the board of railroad commissioners, shall be liable to a penalty of two hundred and fifty dollars and an additional penalty of twenty-five dollars for each day after September first on which it shall neglect to file the same, to be sued for in the name of the people of the state of New York, for their use.

The board of railroad commissioners may extend the time herein limited for cause shown.

As amended ch. 676, Laws 1892.

§ 58. When conductors and brakemen may be policemen—The governor may appoint any conductor or brakeman on any train conveying passengers on any steam railroad in this state a policeman, with all the powers of a policeman in cities and villages, for the preservation of order and of the public peace, and the arrest of all persons committing offenses upon the land or property of the corporation owning or operating such railroad and he may also appoint, on the application of any such corporation or of any steamboat company, such additional policeman designated by it, as he may deem proper, at any station, who shall have the same powers, but not more than one at any one station. Every such policeman shall within fifteen days after receiving his commission, and before entering upon the duties of his office, take and subscribe the constitutional oath of office, and file it with his commission in the office of the secretary of state, who shall there

upon transmit to the county clerk of each county in which such policeman is authorized to act a certificate, under his hand and official seal, setting forth the appointment and the filing of the commission and oath, which certificate shall be filed by the county clerk. Every such policeman shall, when on duty wear a metallic shield with the words "Railway police, or "Steamboat police," as the case may be, and the name of the corporation for which appointed inscribed thereon, which shall always be worn in plain view, except when employed as a detective. The compensation of every such policeman shall be such as may be agreed upon between him and the corporation for which he is appointed, and shall be paid by the corporation. When any corporation shall no longer require the services of any such policeman, they may file notice to that effect in the several offices in which notice of his appointment was originally filed, and thereupon such appointment shall cease and be at an end.

§ 59. Requisites to exercise of powers of future railroad corporations.—No railroad corporation hereafter formed under the laws of this state shall exercise the powers conferred by law upon such corporations or begin the construction of its road until the directors shall cause a copy of the articles of association to be published in one or more newspapers in each county in which the road is proposed to be located, at least once a week for three successive weeks, and shall file satisfactory proof thereof with the board of railroad commissioners; nor until the board of railroad commissioners shall certify that the foregoing conditions have been complied with, and also that public convenience and necessity require the construction of said railroad as proposed in said articles of association. The foregoing certificate shall be applied for within six months after the completion of the three weeks' publication hereinbefore provided for. If a certificate is refused no further proceedings shall be had before said board, but the application may be renewed after one year from the date of such refusal. Prior to granting or refusing said certificate the board shall have a right to permit errors, omissions or defects to be supplied and corrected. After a refusal to grant such certificate the board shall certify a copy of all maps and papers on file in its office and of the findings of the board when so requested by the directors aforesaid. Such directors may thereupon present the same to a general term of the supreme court of the department

within which said road is proposed in whole or in part to constructed, and said general term shall have power, in its discretion, to order said board, for reasons stated, to issue said certificate, and it shall be issued accordingly. Such certificate shall be filed in the office of the secretary of state, and a copy thereof, certified to be a copy of the secretary of state, or his deputy, shall be evidence of the facts therein stated. Nothing in this section shall prevent any such railroad corporation from causing such examinations and surveys for its proposed railroad to be made as may be necessary to the selection of the most advantageous route and for such purpose by its officers or agents and servants, to enter upon the lands or water of any person, but subject to the responsibility for all damage which shall be done thereto. This section shall not apply to street railroads.

As amended ch. 676, Laws 1892.

ARTICLE III

CONSOLIDATION, LEASE, SALE, AND REORGANIZATION.

SECTION 70. Consolidation of corporations owning continuous lines.

71. Conditions.

1. Joint agreement; amount of capital stock.

2. Agreement to be submitted to meeting of stockholders.

72. New corporation.

73. Creditors' rights not to be impaired.

74. Assessment of property of new corporation,

75. Stock of municipal corporation, how represented.

76. Foreclosure of mortgages made by consolidated railroads partly in the state.

77. Powers of corporation of other states.

78. Lease of road.

79. Lessees of railroad may acquire stock therein.

80. Consolidation and lease of parallel lines prohibited.

81. Mortgagee may purchase at foreclosure sale.

82. Certificates of stock may be issued after foreclosure in certain cases.

83. Liabilities of reorganized railroad corporations.

§ 70. Consolidation of corporations owning continuous lines.—Any railroad or other corporation, organized under the laws of this state, or of this state and any other state, and owning or operating a railroad, bridge or tunnel, either wholly within or partly within and partly without the state, or whose lines or route of road have been located but not constructed, may merge an

consolidate its capital stock, franchises, and property with the capital stock, franchises and property of any other railroad, tunnel or bridge corporation or corporations organized under the laws of this state or of this state and any other state, or under the laws of any other state or states, whenever the two or more railroads of the companies or corporations so to be consolidated, tunnels, bridges or branches or any part thereof, or the lines or routes of their road, if not constructed, shall or may form a continuous or connected line of railroad with each other or by means of any intervening railroad bridge, tunnel or ferry and any such consolidated corporation may thereupon construct or finish the construction of such continuous line of railroad, if not previously constructed, and operate the same, subject to all provisions of law applicable to such railroad corporations. Where the road to be operated is in whole or in part a tunnel or sub-surface road, authorized by section 16 of this chapter, its consolidation with another road or roads under the provisions of this section shall not prevent any connecting railroad from having equal rights of transit for its passengers and freight through or over the tunnel or bridge of any such road, upon the same equitable terms, nor shall such consolidation be made where such tunnel or subsurface roads exceeds five miles in length.

As amended ch. 676, Laws 1892.

§ 71. Conditions.—Such consolidation shall be made in the following manner :

1. Joint agreement ; amount of capital stock.—The directors of the corporations proposing to consolidate may enter into a joint agreement, under the corporate seal of each corporation, for the consolidation of such corporations, and prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the new corporation, the number and names of the directors and other officers thereof, and who shall be the first directors and officers and their places* of residence, the number shares of the capital stock, the amount or par value of each share, and the manner of converting the capital stock of each corporation into that of the new corporation, and how and when the directors and officers shall be chosen, with such other details as they shall deem necessary to perfect such new organization and the consolidation of such corporations. But in no case shall the capital stock of the corporation formed by such consolidation ex-

ceed the sum of the capital stock of the corporations so consolidated, at the par value thereof. Nor shall any bonds or other evidences of debt be issued as a consideration for, or in connection with, such consolidation.

2. Agreement to be submitted to meeting of stockholders.

—If stockholders owning two-thirds of all the stock of each of such corporations shall by a consent in writing, acknowledged as are deeds entitled to be recorded and endorsed upon said lease or agreement, signify their assent thereto, it shall be deemed and taken as the adoption of such agreement by and on behalf of such corporation, and the original or certified copy thereof shall be filed as hereinafter provided. If such agreement shall not be consented to in writing by holders of two thirds of the stock of either of such corporations as hereinbefore provided, such agreement shall be submitted to the stockholders of each of such corporations at a meeting thereof called separately for the purpose of taking the same into consideration. Due notice of the time and place of holding such meeting, and the object thereof, shall be given by each corporation to its stockholders by written or printed notices addressed to each of the persons in whose names the capital stock of such corporation stands on the books thereof, and delivered to such persons respectively, or sent to them by mail, when their post-office address is known to the corporation, at least thirty days before the time of holding such meeting, and also by a general notice published at least once a week for four weeks successively in some newspaper printed in the city, town or county where such corporation has its principal office or place of business. At such meeting of stockholders such agreement shall be considered, and a vote by ballot taken for the adoption or rejection of the same, and if the votes of the stockholders owning at least two-thirds of the stock of each corporation present and voting in person or by proxy shall be for the adoption of such agreement, then that fact shall be certified thereon by the secretaries of the respective corporations, under the seal thereof, and the agreement so adopted, or a certified copy thereof, shall be filed in the office of the secretary of state, and in the office of the clerk of the county where the new corporation is to have its principal place of business, and shall from thence be deemed and taken to be the agreement and act of consolidation of such corporations, and thereafter such corporations, parties thereto, shall be one corporation by the name

provided in such agreement, but such act of consolidation shall not release such new corporation from any of the restrictions, liabilities or duties of the several corporations so consolidated.

As amended ch. 676, Laws 1892.

§ 72. New corporation.—Upon the consummation of such act of consolidation all the rights, privileges, exemptions and franchises of each of the corporations, parties to the same, and all the property, real, personal and mixed, and all the debts due on whatever account to either of them, as well as all stock subscriptions and other things in action belonging to either of them, shall be taken and deemed to be transferred to and vested in such new corporation, without further act or deed; and all claims, demands, property, rights of way, and every other interest shall be as effectually the property of the new corporation as they were of the former corporations, parties to such agreement and act; and the title to all real estate, taken by deed or otherwise, under the laws of this state, vested in either of such corporations, parties to such agreement and act, shall not be deemed to revert or be in any way impaired by reason of this act, or anything done by virtue thereof, but shall be vested in the new corporation by virtue of such act of consolidation. And it shall be lawful for any railroad company or corporation, now or hereafter formed by the consolidation of one or more railroad companies or corporations organized under the laws of this state, or under the laws of this state and other states, with one or more railroad companies or corporations organized under the laws of any other state, or the laws of this state and other states, to issue its bonds for the purpose of paying or retiring any bonds theretofore issued by either of said companies or corporations so consolidated, or for any purpose and to the amount authorized by the laws of the state under which either of said companies or corporations so consolidated was organized, and secure the same by a mortgage upon its real or personal property, franchises, rights and privileges, whether within or without this state, and subject to the remedies for the enforcement of the same under the laws of either of said states. Nothing in this act contained shall authorize the execution of any such mortgage without the consent of the stockholders as now required by the laws of this state, nor compel any bondholder to accept payment in whole or in part of any bond or bonds held by him or to surrender the same before they shall become due.

As amended by Laws of 1891, chapter 362, § 1.

§ 73. Creditors' rights not to be impaired.—The rights of all creditors of, and all liens upon the property of, either of such corporations, parties to such agreement and act, shall be preserved unimpaired, and the respective corporations shall be deemed to continue in existence to preserve the same, and all debts and liabilities incurred by either of such corporations shall thenceforth attach to such new corporation, and be enforced against it and its property to the same extent as if incurred or contracted by it. No actions or proceedings in which either of such corporations is a party shall abate or be discontinued by such agreement and act of consolidation, but may be conducted to final judgment in the names of such corporations, or such new corporation may be, by order of the court, on motion substituted as a party.

§ 74. Assessment of property of new corporation.—The real estate of such new corporations, situate within this state, shall be assessed and taxed in the several towns and cities where the same shall be situated in like manner as the real estate of other railroad corporations is or may be taxed and assessed, and such proportion of the capital stock and personal property of such new corporation shall in like manner be assessed and taxed in this state, as the number of miles of its railroad situate in this state bears to the number of miles of its railroad situate in the other state or states.

§ 75. Stock of municipal corporation, how represented. At any meeting of the stockholders of any railroad corporation to consider any agreement or proposition to consolidate, the commissioners or other officers of any municipal corporation holding or having charge of any of the capital stock of such railroad corporation shall represent such municipal corporation, and may act and vote in person or by proxy on all matters relating to such consolidation in the same manner as individual stockholders.

§ 76. Foreclosure of mortgages made by consolidated railroads partly in the state.—Whenever a railroad corporation whose line of road lies partly in this state and partly in another state or states, shall have been created by the consolidation of a railroad corporation of this state with a railroad corporation or corporations of another state or states, and shall have executed a mortgage upon its entire line of railroad, and a sale of the entire line of road under such mortgage shall have been or may here-

after be ordered, adjudged and decreed by a court of competent jurisdiction of the state or states in which the greater part of such line of railroad may be situated, upon the confirmation of such judgment or decree, and of the sale made thereunder, by the supreme court of this state in the judicial district in which some part of such line of road is situated; such sale shall operate to pass title to the purchaser of that part of the line of railroad lying in this state, together with its appurtenances and franchises, with the same force and effect as if the judgment or decree under which such sale is had, had been made by a court of competent jurisdiction of this state. Such judgment or decree and sale may be so confirmed in any action now pending, or that may hereafter be brought in the supreme court, for the foreclosure of such mortgage, or in aid of an action for that purpose pending in such other state, if it shall appear that such confirmation is for the interest of the public and of the parties, due and lawful provision being made for and in respect of any liens upon that part of the line of road or other property sold situate in this state, and for such costs, expenses and charges as may appear to be just and lawful. If a receiver of the entire line of such railroad shall have been, or may hereafter be appointed by such court of competent jurisdiction of the state in which the greater part of the line of railroad is situated, such receiver may perform, within this state, the duties of his office not inconsistent with the laws of this state, and may sue and be sued in the courts of this state.

§ 77. Powers of corporations of other states.—A railroad corporation created under the laws of the state in which the greater part of the line of such railroad may be situated, for the purpose of taking title to and operating the entire line of railroad, so sold as provided in the preceding section, with its franchises and appurtenances, the judgment, decree and sale having been duly confirmed and approved, as therein provided, may hold, possess and operate that part of the line of such railroad lying in this state, and shall have all the rights and franchises theretofore possessed by the corporation executing the mortgage under which such sale was made, and such as now are or may hereafter be conferred upon railroad corporations organized under the laws of this state, and shall be subject to the duties and liabilities to which such corporation was by the laws of this state subject, and to such further or other duties and liabilities as are

now or may hereafter be imposed by law upon railroad corporations of this state, provided that an exemplified copy of the certificate of incorporation under and by virtue of which such corporation is created, and of the judgment or decree under which the entire line of railroad was sold, and a certified copy of the order or judgment or decree of confirmation and approval required by the preceding section, shall be filed in the office of the secretary of state for this state, and in the office of the county clerk of the county where its principal business office in this state is located.

§ 78. **Lease of road.**—Any railroad corporation or any corporation owing or operating any railroad or railroad route within this state may contract with any other such railroad corporation for the use of their respective roads or routes, or any part thereof, and thereafter use the same in such manner and for such time as may be prescribed in such contract. Such contract may provide for the exchange or guarantee of the stock and bonds of either of such corporations by the other and shall be executed by the contracting corporations under the corporate seal of each corporation, and if such contract lease of any such road and for a longer period than one year, such contract shall not be binding or valid unless approved by a vote of the stockholders owning at least two-thirds of the stock of each corporation present and voting in person or by proxy at a meeting thereof called separately for that purpose upon a notice, stating the time, place and object of the meeting, served at least thirty days previously upon each stockholder personally, or mailed to him at his post-office address, and also published at least once a week, for four weeks successively, in some newspaper printed in the city, town or county where such corporation has its principal office, and there shall be endorsed upon the contract the certificate of the secretaries of the respective corporations under the seals thereof, to the effect that the same has been approved by such vote of the stockholders, and the contract shall be executed in duplicate and filed in the offices where the certificates of incorporation of the contracting corporations are filed. The road of a corporation can not be used under any such contract in a manner inconsistent with the provisions of law applicable to its use by the corporation owning the same at the time of the execution of the contract. Such contract shall be executed by the corporations, parties thereto, and proved and

acknowledged in such manner as to entitle the same to be recorded in the office of the clerk or register of each county through or into which the road so to be used shall run. Nothing in this section shall apply to any lease in existence prior to May 1, 1891.

As amended ch. 676. Laws 1892.

§ 79. Lessees of railroad may acquire stock therein.—

Any railroad corporation created by the laws of this state, or its successors, may take a surrender or transfer of the capital stock of the stockholders, or any of them in the corporation whose road is held under lease, and issue in exchange therefor the like additional amount of its own capital stock at par, or on such other terms and conditions as may be agreed upon between the two corporations; and whenever the greater part of the capital stock of any such corporation shall have been so surrendered or transferred, the directors of the corporation taking such surrender or transfer shall thereafter, on a resolution electing so to do, to be entered on their minutes, become ex-officio the directors of the corporation whose road is so held under lease, and shall manage and conduct the affairs thereof, as provided by law; and whenever the whole of such capital stock shall have been so surrendered or transferred, and a certificate thereof filed in the office of the secretary of state, under the common seal of the corporation to whom such surrender or transfer shall have been made, the estate, property, rights, privileges and franchises of the corporation whose stock shall have been so surrendered or transferred, shall thereupon vest in and be held and enjoyed by the corporation, to whom such surrender or transfer shall have been made, as fully and entirely, and without change or diminution, as the same were before held and enjoyed, and be managed and controlled by the board of directors of the corporation, to whom such surrender or transfer of such stock shall have been made, and in the corporate name of such corporation. Where stock shall have been so surrendered or transferred, the existing liabilities of the corporation, and the rights of the creditors and of any stockholder, not surrendering or transferring his stock, shall not be affected thereby.

§ 80. Consolidation and lease to parallel lines prohibited.—No railroad corporations or corporations owning or operating railroads, whose roads run on parallel or competing lines, shall merge, or consolidate, or enter into any contract for the use of their respective roads, or lease the same the one to the other,

unless the board of railroad commissioners of the state or a majority of such board shall consent thereto.

As amended ch. 676, Laws 1892.

§ 81. Mortgagee may purchase at foreclosure sale.—

Any mortgagee of the property and franchises of any railroad corporation may become the purchaser of the same at any sale thereof under the mortgage, upon foreclosure by advertisement, or under a judgment, or decree, or otherwise, and hold and use the same, with all the rights and privileges belonging thereto or connected therewith for the period of six months, and convey the same to any railroad corporation.

§ 82. Certificates of stock may be issued after foreclosure in certain cases.—

If any person or corporation shall be entitled to certificates of stock subscribed to and paid for in any railroad corporation, whose property and franchises have been sold under mortgage foreclosure, and such certificates have not been issued before foreclosure, the officers of the corporation shall, at any time within six months after the foreclosure sale issue and deliver to the person or corporation entitled thereto, upon demand, such certificates of stock, which shall have all the force and effect and confer upon the holder all the rights which he would have had if such certificates of stock had been issued at the time of the payment of the subscription thereto.

§ 83. Liabilities of reorganized railroad corporations.—

A railroad corporation, reorganized under the provisions of law, relating to the formation of new or reorganized corporations upon the sale of their property or franchise, shall not be compelled or required to extend its road beyond the portion thereof constructed at the time the new or reorganized corporation acquired title to such railroad property and franchise, provided the board of railroad commissioners of the state shall certify that, in their opinion, the public interests under all the circumstances do not require such extension. If such board shall so certify and shall file in their office such certificate, which certificate shall be irreversible by such board, such corporation shall not be deemed to have incurred any obligation so to extend its road and such certificate shall be a bar to any proceedings to compel it to make such extension or to annul its existence for failure so to do, and shall be final and conclusive in all courts and proceedings whatever. This

section shall not authorize the abandonment of any portion of a railroad which has been constructed and operated, or apply to Kings county.

ARTICLE IV.

STREET SURFACE RAILROADS.

- SECTION 90. Street surface railroads; general provision.
91. Consent of property owners and local authorities.
 92. Consent of local authorities; how procured.
 93. Condition upon which consent shall be given; sale of franchise at public auction.
 94. Proceedings if property owners do not consent.
 95. Percentage of gross receipts to be paid in cities and villages; report of officers.
 96. Extension of routes over rivers; terminus in other counties; when property holders withhold consent; supreme court may appoint commissioners.
 97. Use of tracks of other roads.
 98. Repair of streets; rate of speed; removal of ice and snow.
 99. Within what time road to be built.
 100. Motive power.
 101. Rate of fare.
 102. Construction of road in streets where other road is built.
 103. Abandonment of part of route.
 104. Contracting corporations to carry for one fare; penalty.
 105. Effect of dissolution of charter as to consents.
 106. Corporate rights saved in case of failure to complete road; right to operate branches in certain cases; conditions; former consents ratified; limitation.
 107. When sand may be used on tracks.
 108. Road not to be constructed upon ground occupied by public buildings or in public parks.
 109. Center-bearing rails prohibited.
 110. Right to cross bridge substituted for bridge crossed for five years.

§ 90. Street surface railroad; general provision.—A corporation organized since May 6, 1884, for the purpose of building and operating or extending a street surface railroad or any of its branches, for public use in the conveyance of persons and property in cars for compensation, upon and along any street, avenue, road or highway, in any city, town or village, or in any two or more civil divisions of the state, must comply with the provisions of this article. A street surface railroad corporation may file in each of the offices in which its certificates of incor-

poration are filed, a statement of the names and descriptions of the streets, roads and highways in which it is proposed to extend its road. Upon filing such statement, such corporation shall, except as otherwise prescribed by law, have the same power and privileges, to extend, construct, operate and maintain its road in such streets, roads and highways as it acquired by its incorporation to construct, operate and maintain its road in the streets, roads and highways named in its certificate of incorporation.

As amended ch. 676, Laws 1892.

§ 91. Consent, of property owners and local authorities.

—Such railroad shall not be built, extended or operated, unless the consent in writing, acknowledged as are deeds entitled to be recorded, of the owners of one-half in value of the property bounded on, and also the consent of the local authorities having control of that portion of a street or highway upon which it is proposed to build or operate such railroad shall have been first obtained. In cities, the common council, acting subject to the power now possessed by the mayor to veto ordinances; in villages the board of trustees, and in towns the town board shall be the local authorities referred to; if in any city, the exclusive control of any street, avenue or other property, which is to be used or occupied by any such railroad, is vested in any other authority, the consent of such authority shall be also first obtained. The value of the property above specified shall be ascertained and determined by the assessment-roll of the city, village or town in which it is situated, completed last before the local authorities shall have given their consent, except property owned by such city, village or town, the value of which shall be ascertained and determined by making the value thereof to be the same as is shown by such assessment-roll to be the value of the equivalent in size and frontage of the adjacent property on the same street or highway; and the consent of the local authorities shall operate as the consent of such city, village or town as the owners of such property. But where such railroad runs through a street or avenue, bounded on one side by a public square or park, the consent of one-half of the property owners on the other side of such street or avenue and opposite to such square or park shall also be obtained.

As amended, chapter 676, Laws 1892.

§ 92. Consent of local authorities; how procured.—The

application for the consent of the local authorities shall be in writing, and before acting thereon such authorities shall give public notice thereof and of the time and place when it will first be considered, which notice shall be published daily in any city for at least fourteen days in two of its daily newspapers if there be two, if not, in one, to be designated by the mayor, and in any village or town for at least fourteen days in a newspaper published therein, if any there shall be, and if none, then daily in two daily newspapers if there be two, if not, one published in the city nearest such village or town. Such consent must be upon the expressed condition that the provisions of this article pertinent thereto shall be complied with, and shall be filed in the office of the clerk of the county in which such railroad is located.

Id.

§ 93. Condition upon which consent shall be given; sale of franchise at public auction.—The consent of the local authorities, in cities containing twelve hundred and fifty thousand inhabitants or more, according to the last federal census or state enumeration, must contain the condition that the right, franchise and privilege of using any street, road, highway, avenue, park or public place shall be sold at public auction to the bidder who will agree to give the city the largest percentage per annum of the gross receipts of such corporation, with a bond or undertaking in such form and amount and with such conditions and sureties as may be required and approved by the comptroller or other chief fiscal officer of the city for the fulfillment of such agreement and for the commencement and completion of its railroad within the times hereinafter designated, according to the plan or plans, and on the route or routes fixed for its construction. Whenever such consent shall provide for the sale at public auction of the right to construct and operate a branch or extension of an existing railroad such consent shall provide that but one fare shall be exacted for passage over such branch or extension and over the line of road which shall have applied therefor, and, further, that if such right shall be purchased by any corporation other than the applicant, that the gross receipts from joint business shall be divided in the proportion that the length of such extension or branch so sold shall bear to the entire length of the road which shall have applied therefor and of such branch or extension, and that if such right shall be purchased by the appli-

cant, the percentage to be paid shall be calculated on such portion of its gross receipts as shall bear the same proportion to the whole value thereof as the length of such extension or branch shall bear to the entire length of its road. The bidder to whom such right franchise and privilege may be sold must be a duly incorporated railroad corporation of this state, organized to construct, maintain and operate a street railroad in the city for which such consent may be given; but no such corporation shall be entitled to bid at such sale unless at least five days prior to the day fixed for such sale, or five days prior to the day to which such sale shall have been duly adjourned, the corporation shall have filed with the comptroller or other chief fiscal officer of the city, a bond in writing and under seal, with sufficient sureties to be approved by such comptroller or officer, conditioned that if such right, franchise and privilege shall be sold to such corporation, to pay to the city where such railroad is situated the sum of fifty thousand dollars as liquidated damages, and not by way of penalty in the event of the failure of such bidder to fulfill the terms of sale, comply with the provisions of this article pertinent thereto, and complete and operate its railroad according to the plan or plans and upon the route and routes fixed for its construction within the time hereinafter designated for the construction and completion of its railroad, and also conditioned to pay to the corporation first applying for the consent, if it shall not be the successful bidder, the necessary expenses incurred by such corporation prior to the sale pursuant to requirement and direction of the local authorities, within twenty days after such sale and upon the certificate of the comptroller or other officer conducting the same as to the sum or amount to be paid. Notice of the time and place and terms of sale, and of the route or routes to be sold, and of the conditions upon which the consent of the local authorities to the construction, operation and extension of such street railroad will be given, must be published by such authorities for at least three successive weeks, and in any city having two or more daily newspapers at least three times a week in two of such papers, to be designated by the mayor, and in any city where two daily newspapers are not published, at least once a week in a newspaper published therein to be designated by the mayor. The comptroller or other chief fiscal officer of the city shall attend and conduct such sale and may twice adjourn the same, but not more than four weeks in all, and shall cancel any bid if the bidder shall not have

furnished adequate security entitling such bidder to bid, or shall otherwise fail to comply with the terms or conditions of sale, and shall resell the consent and license in the same manner as hereinbefore provided for the first sale. The bidder who may build and operate such railroad shall at all times keep accurate books of account of the business and earnings of such railroad, which books shall at all times be subject to the inspection of the local authorities. In the event of the failure or refusal of the corporation operating or using such railroad to pay the rental or percentage of gross earnings agreed upon, and after notice of not less than sixty days to pay the same, the local authorities interested therein may apply to any court having jurisdiction upon at least twenty days' notice to such corporation, and after it shall have had an opportunity to be heard in its defense, for judgment declaring the consent and right to operate and use such railroad forfeited and authorizing the sale again of the same in the manner hereinbefore prescribed, provided, however, that no such resale of any such consent and right heretofore granted shall be authorized except upon the condition that the same shall be subject to all liens and incumbrances existing on said railroads at the time such forfeiture may have been declared. All consents hereafter given by the local authorities shall cease and determine at the expiration of two years thereafter, and every such consent heretofore given to a corporation incorporated under chapter two hundred and fifty-two of the laws of eighteen hundred and eighty-four for the purpose of constructing and operating a street surface railroad only wholly south of the Harlem river shall continue until June thirty, eighteen hundred and ninety-three, when it shall cease, unless prior thereto the consent of a sufficient number of the property owners or the order of the general term in lieu thereof shall have been first obtained, and the provisions of this section shall apply to all applications for such consents, made under any statute either before or after the passage of this chapter, and not finally acted upon at the time of its passage. Whenever it shall be desired to unite two street surface railroad routes at some point not over one-half mile from such respective lines or routes, and establish by the construction of such connection a new route for public travel, and the corporation or corporations owning or using such railroads shall consent to operate such connection as a part of a continuous route for one fare, and it shall appear to the local authori-

ties that such connection cannot be operated as an independent railroad without inconvenience to the public, but that it is to the public advantage that the same should be operated as a continuous line or route with existing railroads, or whenever, for the purpose of connecting with any ferry or railroad depot, it shall be desired to construct an extension or branch not more than one-half mile in length, of any street surface railroad corporation, no sale of such franchise shall be made as provided in this section, but by any consent of the local authorities for the construction and operation of such connection, extension or branch shall provide that the corporation or corporations operating such connection, extension or branch shall pay into the treasury of said city annually the percentage provided for extensions or branches in section ninety-five of this chapter, for the purposes, at the times, in the manner and upon the conditions set forth in such section. Nothing herein contained shall be construed as applying to or affecting or modifying the terms of a certain contract bearing date January 1, 1892, entered into by and between the city of Buffalo and the various street surface railroad corporations therein named in such contract.

As amended chap. 676, Laws 1892.

§ *93. Condition upon which consent shall be given; sale of franchise at public auction.—The consent of the local authorities in cities containing twelve hundred and fifty thousand inhabitants or more, according to the last federal census or state enumeration, must contain the condition that the right, franchise and privilege of using any street, road, highway, avenue, park or public place shall be sold at public auction to the bidder who will agree to give the city the largest percentage per annum of the gross receipts of such corporation, with a bond or undertaking in such form or amount and with such conditions and sureties as may be required and approved by the comptroller or other chief fiscal officer of the city for the fulfillment of such agreement and for the commencement and completion of its railroad within the times hereinafter designated according to the plan or plans approved on the route or routes fixed for its construction. Whenever such consent shall provide for the sale at public auction of the right to construct and operate a branch or extension of an existing railroad, such consent shall provide that but one fare shall be exacted for passage over such branch or extension and over the line

of road which shall have applied therefor, and further, that if such right shall be purchased by any corporation other than the applicant that the gross receipts from joint business shall be divided in the proportion that the length of such extension or branch so sold shall bear to the entire length of the road which shall have applied therefor, and of such branch or extension and that if such right shall be purchased by the applicant, the percentage to be paid shall be calculated on such portion of its gross receipts as shall bear the same proportion to the whole value thereof as the length of such extension or branch shall bear to the entire length of its road. The bidder to whom such right, franchise and privilege may be sold must be a duly incorporated railroad corporation of this state, organized to construct, maintain and operate a street railroad in the city for which such consent may be given, but no such corporation shall be entitled to bid at such sale unless at least five days prior to the day fixed for such sale, or five days prior to the day to which such sale shall have been duly adjourned, the corporation shall have filed with the comptroller or other chief fiscal officer of the city, a bond in writing and under seal, with sufficient sureties to be approved by such comptroller or officer, conditioned that if such right, franchise and privilege shall be sold to such corporation to pay to the city where such railroad is situated the sum of fifty thousand dollars as liquidated damages and not by way of penalty, in the event of the failure of such bidder to fulfill the terms of sale, comply with the provisions of this article pertinent thereto, and complete and operate its railroad according to the plan or plans and upon the route and routes fixed for its construction within the time hereinafter designated for the construction and completion of its railroad, and also conditioned to pay to the company first applying for the consent, if it shall not be the successful bidder, the necessary expenses incurred by such corporation prior to the sale pursuant to requirement and direction of the local authorities, within twenty days after such sale and upon the certificate of the comptroller or other officer conducting the same as to the sum or amount to be paid. Notice of the time and place, and terms of sale, and of the route or routes to be sold, and of the conditions upon which the consent of the local authorities to the construction, operation and extension of such street railroad will be given, must be published by such authorities for at least three successive weeks, and in any city having two or more daily newspapers at least three times a

week in two of such papers to be designated by the mayor, and in any city where two daily newspapers are not published, at least once a week in a newspaper published therein to be designated by the mayor. The comptroller or other chief fiscal officer of the city shall attend and conduct such sale and may twice adjourn the same, but not more than four weeks in all, and shall cancel any bid if the bidder shall not have furnished adequate security entitling such bidder to bid or shall otherwise fail to comply with the terms and conditions of sale, and shall resell the consent and license in the same manner as hereinbefore provided for the first sale. The bidder who may build and operate such railroad shall at all times keep accurate books of account of the business and earnings of such railroad which books shall at all times be subject to the inspection of the local authorities. In the event of the failure or refusal of the corporation operating or using such railroad to pay the rental or percentage of gross earnings agreed upon, and after notice of not less than sixty days to pay the same, the local authorities interested therein may apply to any court having jurisdiction upon at least twenty days' notice to such corporation, and after it shall have had an opportunity to be heard in its defense, for judgment declaring the consent and right to operate and use such railroad forfeited and authorizing the sale again of the same in the manner hereinbefore prescribed, provided, however, that no such resale shall be authorized except upon the condition that the same shall be subject to all liens and incumbrances existing on said railroads at the time such forfeiture may have been declared. All consents hereafter given by the local authorities shall cease and determine at the expiration of two years thereafter, and all such consents heretofore given shall continue until June thirtieth, eighteen hundred and ninety-three, when they shall cease, unless prior thereto the consent of a sufficient number of the property owners or the order of the general term in lieu thereof shall have been first obtained, and the provisions of this section shall apply to all applications for such consents, made under any statute either before or after the passage of this chapter, and not finally acted upon at the time of its passage. Whenever it shall be desired to unite two street surface railroads or railroad routes at some point not over one-half mile from such respective lines or routes and establish by the construction of such connection a new route for public travel and the corporation or corporations owning or using

such railroads shall consent to operate such connection as a part of a continuous route for one fare, and it shall appear to the local authorities that such connection cannot be operated as an independent railroad without inconvenience to the public, but that it is to the public advantage that the same should be operated as a continuous line or route with existing railroads, or whenever, for the purpose of connecting with any ferry or railroad depot, it shall be desired to construct an extension or branch not more than one-half mile in length of any street surface railroad, no sale of such franchise shall be made as provided in this section, but any consent of the local authorities for the construction and operation of such connection, extension or branch shall provide that the corporation or corporations operating such connection, extension or branch shall pay into the treasury of said city annually the percentages provided for extensions or branches in section ninety-five of this article, for the purposes, at the times, in the manner and upon the conditions set forth in such section.

§ 2. Section one hundred and two of chapter five hundred and sixty-five of the laws of eighteen hundred and ninety, entitled "An act in relation to railroads, constituting chapter thirty-nine of the general laws," is hereby amended so as to read as follows :

§ 102. Construction of road in street along or across where other road is built.—No street surface railroad corporation shall construct, extend or operate its road or tracks in that portion of any street, avenue, road or highway, in which a street surface railroad is, or shall be lawfully constructed, except for necessary crossings, without first obtaining the consent of the corporation owning and maintaining the same, except that any street surface railroad company may use the tracks of another street surface railroad company for a distance not exceeding one thousand feet, wherever the court upon an application for commissions shall be satisfied that such use is actually necessary to connect main portions of a line to be constructed as an independent railroad, or to connect said railroad with a ferry, and that the public convenience requires the same, in which event the right to such use shall only be given for a compensation to an extent and in a manner to be ascertained and determined by commissioners to be appointed by the courts as is provided in the condemnation law, or by the board of railroad commissioners in

cases where the corporations interested shall unite in a request for such board to act. Such commissioners, in determining the compensation to be paid for the use by one corporation of the tracks of another, shall consider and allow for the use of tracks and for all injury and damage to the corporation whose tracks may be so used.

NOTE.—Section 93 of the railroad law was amended by chapters 306 and 676 of the Laws of 1892. The latter chapter was based upon a bill reported to the legislature of 1892 by the commissioners of statutory revision, proposing various amendments to the railroad law. By reason of section 33 of the statutory construction law, there may be a question as to which of these two amendments supersedes the other. Both are, therefore, inserted here.

§ 94. Proceedings if property owners do not consent.—If the consent of property owners required by any provisions of this article can not be obtained, the corporation failing to obtain such consents may apply to any general term of the supreme court held in the department in which it is proposed to construct its road for the appointment of three commissioners to determine whether such railroad ought to be constructed and operated. Notice of such application must, at least ten days prior thereto, be served, personally, upon each non-consenting property owner by delivering the same to the person to whom such property is assessed upon such assessment-roll or by duly mailing the same, properly folded and directed, to such property owner at his post-office address with the postage prepaid thereon. If the person upon whom service is to be made is unknown, or his residence and post-office address are unknown and cannot by reasonable diligence be ascertained, service of such notice may be made by publishing the same in such newspaper of the county as the court may direct, at least once a week for two successive weeks. Upon due proof of service of such notice the court to which the application is made shall appoint three disinterested persons, who shall act as commissioners, and who shall, within ten days after their appointment, cause public notice to be given of their first meeting in the manner directed by the court, and may adjourn from time to time, until all their business is completed. Vacancies may be filled by the court after such notice to parties interested as it may deem proper to be given; and the evidence taken before as well as after the happening of the vacancy shall be deemed to be properly before such commissioners. After a public hearing of all parties in

terested, the commissioners shall determine whether such railroad ought to be constructed and operated, and shall make a report thereon, together with the evidence taken, to the general term, within sixty days after appointment, unless the court, or a judge thereof, for good cause shown, shall extend such time; and their determination that such road ought to be constructed and operated, confirmed by such court, shall be taken in lieu of the consent of the property owners hereinbefore required. The commissioners shall each receive ten dollars for each day spent in the performance of their duties and their necessary expenses and disbursements, which shall be paid by the corporation applying for their appointment.

As amended ch. 676, Laws 1892.

§ 95. Percentage of gross receipts to be paid in cities or villages; report of officers.—Every corporation building or operating a railroad or branch or extension thereof, under the provisions of this article, or of chapter 252 of the Laws of 1884, within any city of the state having a population of 1,200,000 or more, shall, for and during the first five years after the commencement of the operation of any portion of its railroad annually, on November first, pay into the treasury of the city in which its road is located, to the credit of the sinking fund thereof, three per cent of its gross receipts for and during the year ending September thirtieth next preceding; and after the expiration of such five years, make a like annual payment into the treasury of the city to the credit of the same fund, of five per cent of its gross receipts. If a street surface railroad corporation existing and operating any such railroad in any such city on May 6, 1884, shall have thereafter extended its tracks or constructed branches therefrom, and shall operate such branches or extensions under the provisions of chapter 252 of the laws of 1884, or of this article, such corporation shall pay such percentages only upon such portion of its gross receipts as shall bear the same proportion to its whole gross receipts as the length of such extension or branches shall bear to the entire length of its line. In any other incorporated city or village the local authorities shall have the right to require, as a condition to their consent to the construction, operation or extension of a railroad under the provisions of this article, the payment annually of such percentage of gross receipts, not exceeding three per cent, into the treasury of the city or village as they may deem proper.

In case of extension the amount to be paid shall be ascertained in the manner heretofore provided. The corporation failing to pay such percentage of its gross earnings shall, after November first, pay, in addition thereto, five per cent a month on such percentage until paid. The president and treasurer of any corporation required by the provisions of this acticle to make a payment annually upon its gross receipts shall, on or before November first in each year, make a verified*report to the comptroller or chief fiscal officer of the city of the gross amount of its receipts for the year ending September thirteenth, next preceding, and the books of such corporation shall be open to inspection and examination by such comptroller or officer, or his duly appointed agent, for the purpose of ascertaining the correctness of its report as to its gross receipts. The corporate rights, privileges and franchises acquired under this article or such chapter by any corporation, which shall fail to comply with all the provisions of this section, shall be forfeited to the People of the state, and upon judgment of forfeiture rendered in an action brought in the name of the People by the attorney-general, shall cease and determine.

As amended ch. 676, Laws 1892.

§ 96. Extension of route over rivers ; terminus in other counties ; when property owners withhold consent supreme court may appoint commissioners.—Any street railroad except in the counties of New York or Kings, now in operation in this state, which shall, by a two-thirds vote of its directors, decide to extend the route of its road, so as to cross the Hudson river over and by any bridge now or hereafter constructed under the provisions of any law of this state, may so extend their route over and across such bridge upon such terms as may be mutually agreed upon between it and such bridge company, and may locate the terminus of their road in the county adjoining the one in which their road is now located and in operation. Upon first obtaining the consent of such bridge company or its lessees, and the consent of the owners of one-half in value of the property bounded on, and the consent also of the local authorities having the control of that portion of a street or highway upon which it is proposed to construct or operate such railroad, or in case the consent of such property owners cannot be obtained, the general term of the supreme court in the district in which it is proposed to be constructed, may, upon application, appoint three commis-

sioners who shall determine, after a hearing of all parties interested, whether such railroad ought to be constructed or operated, and their determination, confirmed by the court, may be taken in lieu of the consent of the property owners.

§ 97. Use of tracks of other roads.—Any railroad corporation in this state, whose cars are run and operated by horses or other motive power, authorized by this article, upon the surface of the street, excepting in the city and county of New York, may, for the purpose of enabling it to connect with and run and operate its cars between its tracks, and a depot or car-house owned by it, run upon, intersect, and use, for not exceeding five hundred feet, the tracks of any other railroad corporation, the cars of which are run and operated in like manner with the necessary connections and switches for the proper working and accommodation of the cars upon such tracks, and in connection with such depot or car-house, upon paying therefor such compensation as it may agree upon with the corporation owning the tracks to be so run upon, intersected, and used; and in case such corporations cannot agree upon the amount of such compensation, the same shall be ascertained and determined in the manner prescribed in the condemnation law.

§ 98. Repair of streets; rate of speed; removal of ice and snow.—Every street surface railroad corporation so long as it shall continue to use any of its tracks in any street, avenue or public place in any city or village shall have and keep in permanent repair that portion of such street, avenue or public place between its tracks, the rails of its tracks, and two feet in width outside of its tracks, under the supervision of the proper local authorities, and whenever required by them to do so, and in such manner as they may prescribe. In case of the neglect of any corporation to make pavements or repairs after the expiration of thirty days notice to do so, the local authorities may make such reasonable regulations and ordinances as to the rate of speed, mode of use of tracks, and removal of ice and snow, as the interests or convenience of the public may require. A corporation whose agents or servants willfully or negligently violate such an ordinance or regulation, shall be liable to such city or village for a penalty not exceeding five hundred dollars to be specified in such ordinance or regulation.

As amended, chapter 676, Laws 1892.

§ 99. **Within what time road to be built.**—In case any such corporation shall not commence the construction of its road, or of any extension thereof within one year after it has obtained the consent of the local authorities and property owners, or the determination of the general term as herein required, and shall not complete the same within three years after obtaining such consents, its rights, privileges and franchises shall cease and determine. If the performance of any such act, within such time, is prevented by legal proceeding, such court may also extend such time during the time that performance is so prevented. The time for compliance with the requirements of this section by a street surface railroad corporation incorporated for the purpose of constructing a street surface railroad only, wholly south of the Harlem river and in cities of over twelve hundred thousand inhabitants and which has heretofore obtained such consents, is hereby extended until June 30th, 1893.

As amended, ch. 676, Laws 1892.

§ 100. **Motive power.**—Any street surface railroad may operate any portion of its road by animal or horse power, or by cable, electricity, or any power other than locomotive steam power, which may be approved by the state board of railroad commissioners, and consented to by the owners of one-half of the property bounded on that portion of the railroad with respect to which a change of motive power is proposed; and if the consent of such property owners can not be obtained, the determination of three disinterested commissioners, appointed by the general term of the supreme court of the department in which such railroad is located, in favor of such motive power, confirmed by the court, shall be taken in lieu of the consent of the property owners. The consent of the property owners shall be obtained and the proceedings for the appointment and the determination of the commissioners and the confirmation of their report shall be conducted in the manner prescribed in sections ninety-one and ninety-four of this article; so far as the same can properly be made applicable thereto.

Any railroad corporation making a change in its motive power under this section, may make any changes in the construction of its road or road bed or other property rendered necessary by the change in its motive power.

As amended, ch. 676, Laws 1892.

§ 101. Rate of fare.—No corporation constructing and operating a railroad under the provisions of this article, or of chapter 252 of the laws of 1884, shall charge any passenger more than five cents for one continuous ride from any point on its road, or on any road, line or branch operated by it, or under its control, to any other point thereof, or any connecting branch thereof, within the limits of any incorporated city or village. Not more than one fare shall be charged within the limits of any such city or village, or passage over the main line of road and any branch or extension thereof if the right to construct such branch or extension shall have been acquired under the provisions of such chapter or of this article. This section shall not apply to any part of any road constructed prior to May 6, 1884, and then in operation, unless the corporation owning the same shall have acquired the right to extend such road, or to construct branches thereof under such chapter, or shall acquire such right under the provisions of this article, in which event its rate of fare shall not exceed its authorized rate prior to such extension. The legislature expressly reserves the right to regulate and reduce the rate of fare on any railroad constructed and operated wholly or in part under such chapter or under the provisions of this article.

As amended, ch. 676, Laws 1892.

§ 102. Construction of road in street where other road is built.—No street surface railroad corporation shall construct, extend or operate its road or tracks in that portion of any street, avenue, road or highway, in which a street surface railroad is, or shall be lawfully constructed, except for necessary crossings or, in cities, villages and towns of less than 1,250,000 inhabitants, over any bridge, without first obtaining the consent of the corporation owning and maintaining the same, except that any street surface railroad company may use the tracks of another street surface railroad company for a distance not exceeding one thousand feet, and in cities, villages and towns of less than 1,250,000 inhabitants shall have the right to lay its tracks upon and run over and use any bridge used wholly or in part as a foot bridge, whenever the court upon an application for commissioners shall be satisfied that such use is actually necessary to connect main portions of a line to be constructed as an independent railroad, or to connect said railroad with a ferry, and that the public convenience requires the same, in which event the right to such use shall only be given for

a compensation to an extent and in a manner to be ascertained and determined by commissioners to be appointed by the court as is provided in the condemnation law, or by the board of railroad commissioners in cases where the corporations interested shall unite in a request for such board to act. Such commissioners in determining the compensation to be paid for the use by one corporation of the tracks of another, shall consider and allow for the use of the tracks and for all injury and damage to the corporation whose tracks may be so used. Any street surface railroad corporation may, in pursuance of a unanimous vote of its stockholders voting at a special meeting called for that purpose, by notice in writing, signed by a majority of the directors of such corporation stating the time, place and object of the meeting, and served upon each stockholder appearing as such upon the book of the corporation, personally or by mail, at his last known post office address, at least sixty days prior to such meeting, guarantee the bonds of any other street surface railroad corporation whose road is wholly or partly in the same city.

As amended chap. 676, Laws 1892.

§ 103. Abandonment of part of route.—Any street surface railroad corporation which is the lessee or lessor, or both, or which has the right to use the route or portion of the route of another such corporation pursuant to a lease or agreement lawfully entered into with it, may declare any portion of its own route which it may deem no longer necessary for the successful operation of its roads and convenience of the public in consequence of such lease or contract, to be relinquished or abandoned. Such declaration of abandonment must be adopted by the board of directors of the corporation under its seal, which shall be submitted to the stockholders thereof at a meeting called and conducted in the same manner as required by law for meetings of stockholders for the approval of leases by railroad corporations for the use of their respective roads. If the stockholders shall, at such meeting ratify and adopt such declaration of abandonment, the secretary of the company shall so certify under the seal of the corporation upon such declaration. Such declaration shall then be submitted to the board of railroad commissioners for its approval, and if approved by such board, such approval shall be indorsed thereon and annexed thereto, and the declaration so certified and indorsed shall be filed and recorded in the office of the secretary of state, and

from the time of such filing, such portion of the route designated in the declaration shall be deemed to be abandoned.

Id.

§ 104. Contracting corporations to carry for one fare ; penalty.—Every such corporation entering into such contract shall carry or permit any other party thereto to carry between any two points on the railroads or any portions thereof embraced in such contract any passenger desiring to make one continuous trip between such points for one single fare, not higher than the fare lawfully chargeable by either of such corporations for an adult passenger. Every such corporation shall upon demand, and without extra charge, give to each passenger paying one single fare a transfer, entitling such passenger to one continuous trip to any point or portion of any railroad embraced in such contract, to the end that the public convenience may be promoted by the operation of the railroads embraced in such contract substantially as a single railroad with a single rate of fare. For every refusal to comply with the requirements of this section the corporation so refusing shall forfeit fifty dollars to the aggrieved party. The provisions of this section shall only apply to railroads wholly within the limits of any one incorporated city or village.

Id.

§ 105. Effect of dissolution of charter as to consents.—Whenever any street surface railroad corporation shall have been dissolved or annulled, or its charter repealed by an act of the legislature, the consent of owners of property bounded on, and the consent of the local authorities having the control of that portion of a street or highway upon which the railroad of such corporation shall have been theretofore constructed and operated, and the order of the general term confirming the report of any commissioner that such railroad ought to be constructed or operated, shall not, nor shall either thereof, be deemed to be in any way impaired, revoked, terminated or otherwise affected by such act of dissolution, annulment or repeal, but the same and each thereof shall continue in full force, efficacy and being. The right to the further enjoyment and to the use thereof, subsequent to such act of dissolution, annulment or repeal, and of all the powers, privileges and benefits therein or thereby created, shall be sold at public auction by the local authorities within whose jurisdiction such railroads shall be, in the same manner as is provided in sec-

tion ninety-three of this article. When such sale shall have been so made, the purchaser thereat shall have the right to the further enjoyment and use of such consents and orders, and of each thereof, and of all the powers, privileges and benefits therein or thereby created, in like manner as if such purchaser had been originally named in such consents, reports and orders; if such purchaser shall be otherwise authorized by law to construct, maintain and operate a street surface railroad within the municipality within which such railroad shall be.

Id.

§ 106. Corporate rights saved in case of failure to complete road; right to operate branches; conditions; former consents ratified; limitations.—The corporate existence of and powers of every street surface railroad corporation, which has completed a railroad upon the greater portion of the route designated in its certificate of incorporation, within ten years from the date of filing such certificate in the office of the secretary of state, and which has operated such completed portion of its railroad continuously for a period of five years last past, and is now operating the same, shall continue with like force and effect, as *though it had in all respects complied with the provisions of law with reference to the time when it should have fully completed its road. Every such corporation shall have the right to operate any extensions* and branches of its railroad, now constructed and operated by it, which have been so constructed and operated by it, for a period of ten years last past, with like force and effect, as though the route of such extensions* and branches were designated in its certificate of incorporation. But every such street railroad corporation is authorized to operate such railroad and any extension* or branches thereof, upon condition that it has heretofore, or shall hereafter, obtain the consent of the local authorities having the control of that portion of the streets, avenues or highways included in such railroad, or any extension* or branches thereof, to the construction and operation of the same, and also upon the condition that it has heretofore or shall hereafter first obtain the consent of the owners of one-half in value of the property bounded on the portion of the streets, avenues or highways included in the route or such railroad, or any extension* or branches thereof, to the construction and operation of

*So in the original.

the same, or in case the consent of such property owners can not be obtained, the general term of the supreme court of the department in which such railroad or any extension or branch thereof is located, may, upon application, appoint three commissioners who shall determine, after a hearing of all the parties interested, whether such railroad ought to be constructed or operated, and their determination, confirmed by the court, may be taken in lieu of the consent of the property owners. All consents heretofore given, or grants made by local authorities having the control of the portion of any street, avenue or highway included in the route of such railroad, or any extensions or branches thereof, to any such street surface railroad corporation, are hereby ratified and confirmed and declared valid. This section shall be applicable to any such corporation in any town, city or village having less than twenty thousand inhabitants which has completed any portion of its road upon the route designated in its certificate of incorporation within the time required by law for the completion of its road. This section shall not apply to or affect any railroad corporation in the city of New York; nor any special grant made to or authority conferred upon any street surface railroad corporation by any law of this state; nor any pending litigation; nor shall it impair existing rights, privileges or franchises of any street surface railroad corporation. (Id.)

§ 107. When sand may be used on tracks.—The owner or operator of any street surface railroad in cities of this state having a population of five hundred thousand or more, may place upon the space between the rails of such road, sand in sufficient quantities and no more to prevent the horses traveling thereon from slipping.

Id.

§ 108. Road not to be constructed upon ground occupied by public buildings or in public parks.—No street surface railroad shall be constructed or extended upon ground occupied by buildings belonging to any town, city, county, or to the state, or to the United States, or in public parks, except in tunnels to be approved by the local authorities having control of such parks.

Id.

§ 109. Center-bearing rails prohibited.—No street surface railroad corporation shall hereafter lay down in the streets of any

incorporated city or village of this state what are known as "center-bearing rails;" but in all cases, whether in laying new track or in replacing old rails, shall lay down "grooved" or some other kind of rail not "center-bearing" approved by the local authorities. Such grooved or other rail shall be of such shape and so laid as to permit the paving-stones to come in close contact with the projection which serves to guide the flange to the car wheel. Where in any city, the duty of repairing and repaving streets, as distinguished from the authorization of such paving, repairing and repaving, is by law vested in any local authority other than the common council of such city, such other local authority shall be the local authority referred to in this section.

The original section 109 was repealed by chapter 676, Laws 1892.

§ 110. Rights to cross bridge substituted for a bridge crossed for five years.—Should any street surface railroad company have crossed any bridge as a part of its route for a period of more than five years and should other bridge be substituted therefor at any time, such company shall have the right to cross such substituted bridge and to lay and use railway tracks thereon for the transit of its cars and to make all changes and extensions of its route subject to all the provisions of this act, as the convenient operation of its cars and public convenience may require.

Id.

ARTICLE V. •

OTHER RAILROADS IN CITIES AND COUNTIES.

SECTION 120. Application for railway; commissioners.

121. Oath and bond of commissioners.

122. First meeting of commissioners.

123. Determination of necessity of railroad and route.

124. Adoption of plans and terms upon which road shall be built.

125. Appraisal of damages and deposit of money as security.

126. Shall prepare certificate of incorporation; proviso as to forfeiture.

127. Organization.

128. Commissioners to deliver certificate; affidavit of directors.

129. Powers.

130. Crossing of horse railroad track.

131. Where route coincides with another route.

132. Commissioners; to transfer plans, *et cetera*.

133. Commissioners to file reports; confirmation thereof.

134. Pay of commissioners.

135. Quorum; term of office; removal; vacancies in board of commissioners.

- SECTION 136. Abandonment or change of route; new commissioners; their power and proceedings.
137. Increased deposits; when and how required.
138. Trains to come to full stop, etc.
139. Gates.
140. Penalty for violation of this article.
141. Sections to be printed and posted.
142. Extension of time.

§ 120. Application for railway commissioners.—Upon the application of at least fifty reputable householders and taxpayers of any county or city, verified upon oath before a justice of the supreme court, that there is need in said county or city of a steam railway in the streets, avenues and public places thereof for the transportation of passengers, mails or freight, the board of supervisors of such county may, within thirty days thereafter, by resolution approve of the application, and authorize its presentation to the supreme court, and if the railway is to be built wholly within the limits of a city, upon the application of a like number of householders and taxpayers of the city to the mayor thereof, such mayor may, within thirty days thereafter, indorse upon the application his approval and direction that it may be presented to the supreme court, and if the railway is to be built partly within the limits of a city and partly without, such application shall be approved both by the mayor of the city and the board of supervisors of the county, and its presentation to the supreme court, authorized by them, and upon the presentation of such application so approved and authorized to a special term of the supreme court, held in the district where such railway is to be built, or some part thereof, the court may appoint five commissioners, residents of the city if the railway is to be built wholly within the city, and of the county, if it is to be built wholly or partly outside of the limits of a city, to determine the necessity of such railroad, the route thereof, the time within which and the conditions upon which it shall be constructed, the damages to the property owners along the line thereof and all the matters lawfully submitted to them, and discharge the duties imposed upon them by law.

§ 121. Oath and bond of commissioners.—Within ten days after his appointment and before entering upon the discharge of any of the duties of his office, each commissioner shall take and subscribe the constitutional oath of office, which shall be filed in

the office of the clerk of the county and shall execute a bond to the people of the state in the penal sum of twenty-five thousand dollars, with two or more sureties, to be approved by a justice of the supreme court of the department in which the railway is to be built and conditioned for the faithful performance of the duties of the office, which bond shall be filed in the office of the clerk of the county.

§ 122. First meeting of commissioners.—Within fifteen days after their appointment, the commissioners shall meet in some convenient place in the county or city and organize themselves as a board with appropriate officers.

§ 123. Determination of necessity of railroad and route
The commissioners shall, within thirty days after such organization, determine upon the necessity of such steam railroad, and if they find it to be necessary, they shall, within sixty days after such organization, fix and determine the route therefor, and shall have the exclusive power to locate such route, over, under, through or across the streets, avenues, places or lands in such county or city and to provide for the connection or junction with any other railway or bridge, if the consent of the owners of one-half in value of the property bounded on and the consent of the local authorities having control of that portion of a street or highway, upon which it is proposed to construct or operate such railway have been first obtained. If the consent of such property owners cannot be obtained, the determination of three commissioners appointed by the general term of the supreme court of the department where the railroad is to be constructed, made after due hearing of all parties interested, and confirmed by the court, that such railway ought to be constructed and operated, may be taken in lieu of the consent of such property owners. No such railway shall be located in or upon such portion of any street, avenue, place or lands in such county as are now occupied by an elevated or underground railway or in which such a railway has already been authorized by law to be so located and constructed, or which are contained in public parks, or occupied by buildings belonging to the county or the state or United States, or in or upon the following streets, avenues and public places, viz.: Broadway, Fifth avenue, Fourth avenue above Forty-second street, in the city of New York; Debevoise place, Irving place, Lefferts place; those

portions of Grand, Classon and Franklin avenues and Dowling street lying between the southerly line of Lexington avenue and the northerly line of Atlantic avenue, that portion of Classon avenue lying between the northerly line of Lexington avenue and the southerly line of Park avenue, and that portion of Washington avenue lying between Park and Atlantic avenues in the city of Brooklyn; and that portion of the city of Buffalo lying between Michigan and Main streets, but such railway may be located and constructed across such excepted streets, avenues and places at their intersection only with other streets, avenues and places.

As amended ch. 676, Laws 1892.

§ 124. Adoption of plans, and terms upon which road shall be built.—The commissioners by such public notice, and under such conditions, and with such inducements as they may prescribe, shall invite a submission of plans for the construction and operation of such railway, and shall meet at a time and place in such notice named, not more than ninety days after the irorganization, and decide upon the plans for the construction thereof, with the necessary supports, turnouts, switches, connections, sidings, landing places, stations, buildings, platforms, stairways, elevators, telegraph and signal devices, or other requisite appliances, upon the route or location determined upon by them. They shall, upon notice to the local authorities, and after hearing all parties interested, fix and determine what compensation, if any, in a gross sum or in a certain percentage of receipts, shall annually be paid to the local authorities by the corporations formed for the purpose of constructing, maintaining and operating such railway for public use in the conveyance of persons and property, for the use and occupation by the corporation of the streets, avenues and highways in and upon which its railway is to be constructed, and the time when such railway, or a portion thereof, shall be constructed and ready for operation, and the maximum rates to be paid for transportation and conveyance thereon, and the hours during which special cars or trains shall be run at reduced rates of fare; and the amount of the capital stock of such corporation, and the number of shares into which it shall be divided, and the percentage thereof to be paid in cash on subscribing for such shares.

The commissioners may select two or more routes, upon one of which such railway may be constructed and operated; and the

local authorities may consent to the construction and operation such railway upon one or more of such routes, or parts thereof and the commissioners shall have power to change and readopt routes and plans for the construction and operation of such railway after they have been submitted to the local authorities, in cases where such authorities may recommend such changes, they may not be willing to consent to the construction or operation of the railway, upon the routes and plans adopted, unless such changes are made therein.

Id.

§ 125. Appraisal of damages and deposit of money as security.—The commissioners shall, within one hundred and ten days after their organization, ascertain and determine the aggregate pecuniary damage arising from the diminution in the value of the property bounded on that portion of such street or street highway or highways, upon which it is proposed to construct and operate such railway to be caused by the construction and operation thereof. For that purpose they shall view the several parcels of real property so bounded, and shall appraise separately the pecuniary damages arising from such diminution in value of each parcel thereof, and for the purposes of such appraisal they shall give notice of the time and place, when and where they will meet to hear the owners, or persons interested in such real property, which notice shall be published for at least ten days consecutively in at least two newspapers in the county where such railway is to be constructed and shall take such material testimony upon the probable diminution in value of any or all such parcels to be so caused as may be offered by or in behalf of any person or party interested therein, and the aggregate sum of the amounts so appraised and determined by them shall be the aggregate pecuniary damage required to be ascertained and determined as above provided. No corporation which shall hereafter be organized under this article shall enter upon any street, highway or lane therein, until it shall first have deposited with some trust company, to be designated by the mayor of the city within which it is proposed to construct the railway or any part thereof, and by the board of supervisors, when the road does not lie wholly within a city, a sum of money equal to the amount so ascertained and determined by the commissioners to be the aggregate pecuniary damage to such property within the city, or within the county outside of any city, or

shall have secured the payment of such amount by depositing with such trust company negotiable securities, equivalent at their par and actual value to such aggregate amount, and approved by the mayor of the city in which such road is wholly or in part located, and by the county treasurer of the county if the road is located wholly or in part outside of the limits of such city. The court may accept in lieu of the deposit of money or securities herein required the bond of the corporation, with two or more sureties, to be approved by the court, to the effect that the corporation before constructing or operating its railway in front of any premises, shall pay to the owners of the real property all the damages sustained, or which will be sustained by him, as fixed and determined by such commissioners, and the costs allowed, if any. Such bond shall be in a sum double the amount of such damages, and the sureties shall justify in the aggregate to an amount equal to the amount of such bond. Such corporation shall also, at the same time, deposit with such trust company or with the county treasurer, as the commissioners may direct, the sum of five thousand dollars in cash, for the payment of the expense of apportioning and distributing such fund. Unless such moneys or securities shall be deposited by such corporation within one year after it shall have obtained the consent of the local authorities, and of the property owners, or the confirmation by the general term of the supreme court, of the determination of three commissioners in lieu thereof, and in the case of a corporation heretofore organized within one year after it shall have obtained the confirmation by the general term of the supreme court of the report of three commissioners in lieu of the consent of property owners, or within one year after the commissioners appointed to ascertain and determine the aggregate pecuniary damages as provided in this article, shall have made their report, then such corporation shall be deemed not to have accepted the franchises granted. Where the commissioners shall fix and determine different periods of time within which different sections of such railway shall be constructed and ready for operation, they shall ascertain, determine, and report separately the aggregate pecuniary damage to property bounded upon that portion of such street or streets upon which each of such sections is located. Upon the deposit by the corporation as above provided of moneys or securities equivalent to the aggregate pecuniary damage to be sustained by any one of such sections, or of any bond given in lieu thereof, it shall immediately be vested

with the right and privilege to construct its railway through such section. (Id.)

§ 126. Shall prepare certificate of incorporation; proviso as to forfeiture.—The commissioners shall prepare an appropriate certificate of incorporation for the corporation in the last section mentioned in which shall be set forth and embodied, a component parts thereof, the several conditions, requirements and particulars by such commissioners determined pursuant to the provisions of this article, and which shall also provide for the release and forfeiture to the supervisors of the county, or if the road is to be constructed wholly or partly within a city, to such city, of all rights and franchises acquired by such corporation in case such railway or railways shall not be completed within the time and upon the conditions therein provided; and the commissioners shall thereupon and within one hundred and twenty days after their organization cause a suitable book of subscription to the capital stock of such corporation, to be opened pursuant to due public notice at a banking office in such county or city. A failure by any corporation heretofore or hereafter organized under this article to complete its railway within the time limited in and by its certificate of incorporation shall only work a forfeiture of the franchises of such corporation with respect to that portion of its route which such corporation shall have failed to complete, and shall not affect the rights and franchises of such corporation to construct and operate such part of its railway which it shall have completed within the term prescribed by its certificate of incorporation, or as to which the time for completion shall not have expired notwithstanding any thing to the contrary in its certificate of incorporation.

§ 127. Organization.—Whenever the whole capital stock of such corporation or an amount of such capital stock proportionate to the part of such railway directed by the commissioners to be constructed, shall have been subscribed by not less than fifteen persons, and the fixed percentage of such subscriptions shall have been paid, in cash, the commissioners shall, by written or printed notice of ten days, served personally or by mail, call a meeting of such subscribers for organization, and appoint the inspectors and election to serve thereat. At such meeting, or at any subsequent one to which the same may be adjourned, a majority in number and amount of such subscribers may elect persons, of a number

to be theretofore determined by the commissioners not less than nine, who shall be directors for one year of the corporation formed for the purposes of constructing and operating such railway.

§ 128. Commissioners to deliver certificate; affidavit of directors.—Within ten days after the election of such directors the commissioners shall deliver to them a certificate in duplicate, verified by the oath of three commissioners, before a justice of the supreme court, setting forth the certificate of incorporation and the organization of the corporation for the purposes therein mentioned, and within five days after the reception by them of such certificates, three of the directors so elected shall make affidavit in duplicate that the full amount of stock has been subscribed in good faith to construct, maintain and operate the railway or railways in such certificate of incorporation mentioned, and such directors shall file such affidavits and certificate in the office of the secretary of state, and a duplicate of the same in the office of the clerk of the county wherein such railway shall be located; and thereupon the persons who have so subscribed such certificate of incorporation and all persons who shall become stockholders in such corporation shall be a corporation by the name specified in such certificate, and be subject to the duties, liabilities and restrictions of such corporations.

§ 129. Powers.—Every such corporation shall have power, in addition to the powers conferred by the general and stock corporation laws and by subdivisions two, five and seven of section eight of this chapter :

1. To take and convey persons and property on their railroad by the power or force of steam or by any motor other than animal power, and to receive compensation therefor.

2. To enter upon and underneath the several streets, avenues and public places and lands designated by the commissioners, and, enter into and upon the soil of the same, to construct, maintain operate and use in accordance with the plan adopted by the commissioners, a railway upon the route or routes and to the points decided upon and to secure the necessary foundations and erect the columns, piers and other structures which may be required to secure safety and stability in the construction and maintenance of the railways constructed upon such plan and for operating the same; and to make such excavations and openings along the route through which such railway shall be constructed as shall be nec-

essary from time to time. In all cases the surface of the streets around such foundations, piers and columns shall be restored to the condition in which they were before such excavations were made, as near as may be, and any interference with or change in the water mains, or in the sewers or lamp posts, except such changes as may be made with the concurrence of the proper department or authority shall be avoided; and the use of the streets, avenues, places and lands designated by the commissioners and the right of way through the same for the purpose of a railway, as herein authorized, shall be considered and is hereby declared to be a public use, consistent with the uses for which the roads, streets, avenues and public places are publicly held. No such corporation shall have the right to acquire the use or occupancy of public parks or squares in any such city or county, or the use or occupancy of any of the streets or avenues, except such as may have been designated for the route or routes of such railway, and except such temporary privileges as the proper authorities may grant to such corporations to facilitate such construction, and no such railway shall be constructed across the track of any steam railway now in actual operation at the grade thereof, nor shall any piers or supports for any elevated railway be erected upon a railway track now actually in use in any street or avenue; and no such corporation shall construct a street surface railroad to run in whole or in part upon the surface of any street or highway under the provisions of this article.

§ 130. Crossing of horse railroad track.—Whenever the route selected by the commissioners for the construction of such railway shall intersect, cross or coincide with any horse railway track occupying the surface of the street or avenues, such railway corporation is hereby authorized to remove, for the purpose of constructing its road, the tracks of such horse railway; but the same shall be done in such manner as to interfere as little as possible with their practical operation or working, and upon the construction of such railway, where such removals or changes have been made, the same shall be restored as near as may be to the condition in which they were previous to the construction of such railroad. All such removals and restorations shall be made at the proper cost and charges of such corporation, but no authority is herein given to any such corporation to use the tracks of any horse railway.

§ 131. Where route coincides with another route.—

Whenever the route or routes determined upon by the commissioners coincide with the route or routes covered by the charter of an existing corporation, formed for the purpose of constructing and operating such a railway, and it has not forfeited its charter or failed to comply with the provisions thereof, requiring the construction of a road or roads within the time therein prescribed, such corporation shall have the like power to construct and operate such railway upon the fulfillment of the like requirements and conditions imposed by the commissioners as a corporation specially formed under this article, and the commissioners may fix and determine the route or routes by which any elevated steam railway now in actual operation may connect with other steam railways or the depots thereof, or with steam ferries, upon making compensation therefor, and in case such corporations can not agree with the owners of such steam railways, depots or ferries upon the amount of such compensation, and such owners may be entitled to compensation therefor, the amount of such compensation shall be ascertained and paid in the manner prescribed in the condemnation law, and upon fulfillment by such elevated railway corporation, so far as it relates to such connection, of the requirements and conditions imposed by this article, it shall possess all the powers conferred by section 129 of this article, and when any connecting route or routes shall be so designated, such elevated railway corporation may construct such connection with all the rights and with like effect as though the same had been part of the original route of such railway.

§ 132. Commissioners to transfer plans, etc.—Within one month after such corporation shall have been formed and organized in the manner hereinbefore provided, the commissioners shall transfer and deliver to the corporation all plans, specifications, drawings, maps, books and papers in their possession, and they shall, within the like period of one month after the organization of such corporation, cause to be paid to the treasurer thereof all money collected under the provisions of this article, after deducting therefrom the necessary expenses incurred by the commissioners and the amounts due to them for their salaries.

§ 133. Commissioners to file report; confirmation thereof.

—The commissioners shall within one hundred and forty days after their appointment, make a report to a special term of the

supreme court of the department in which such railway may be located, of the amount of the pecuniary damage arising from the diminution of value of each parcel of property bounded on the portion of the street or streets, highway or highways, upon which it is proposed to construct such railway or railways, which will be caused by the construction, maintenance and operation thereof. The name and place of residence of the owner or owners of each parcel shall be stated if the same are known, or can be, and if not known the name of the person or persons appearing by the certificate of the clerk or register of the county, to have the title thereto from the records in his office, and a specific description of each parcel of property with reasonable certainty. The testimony, if any, taken by the commissioners as to the amount of such damage, shall accompany their report. Within thirty days after filing and recording its certificate of incorporation, the corporation authorized to construct and operate such railway or railways shall move to confirm such report by giving notice of such motion to the property owners in the manner in which notice of the time and place of hearing before the commissioners is required by section 125 to be given, and if the corporation fails to so move any property owner may take the motion; and thereafter the proceedings shall be conducted in the manner prescribed in the condemnation law. Before constructing and operating its railway in front of any real property bounded upon any street, avenue or public place wherein the corporation is authorized by the certificate and report of the commissioners to construct and operate its road, such corporation shall pay to the owner of the real property the damages sustained or which will be sustained by him in consequence thereof, as finally fixed and ascertained, and the cost allowed him, if any, and the court may direct that such damage be paid out of the moneys deposited pursuant to the provisions of section 125, or in case negotiable securities shall have been deposited in lieu of money, that so much of such securities shall be sold as may be necessary to raise the amount required to be paid to such owner for damages and costs if any. If a bond shall have been executed in lieu of such deposit, the court may order the sureties in such bond to pay the damages so fixed and ascertained, and in default thereof may cause them to be proceeded against and punished as for a contempt of court.

As amended ch. 676, Laws 1892.

*So in the original.

§ 134. Pay of commissioners.—Each of the commissioners shall be paid for his services at the rate of ten dollars per day for each day of actual service as such commissioner, and all expenses necessarily incurred by him in the discharge of his duties, to be paid by such corporation, but if a sufficient amount of capital stock shall not be subscribed within one year after the appointment of such commissioners to authorize the formation of such corporation, the commissioners shall receive no salary, and shall cause to be returned to the subscribers for such stock the amounts paid in by them, after deducting therefrom the necessary expenses incurred by the commissioners, but the time, if any, unavoidably consumed by the pendency of legal proceedings shall not be deemed a part of any period of time limited by this article.

§ 135. Quorum; term of office; removal; vacancies in board of commissioners.—A majority of the members of any board of commissioners appointed under this article shall be a quorum for the transaction of any business or the performance of any duty or function, or the exercise of any power conferred or enjoined upon them. Any commissioner may be removed for cause at any time by the power appointing him, but no commissioner shall be removed without due notice and an opportunity to be heard in defense: and no commissioner thus removed is, or shall be, eligible to be again appointed to the office of commissioner. In case of the death, resignation or removal from office of any commissioner, the vacancy shall be filled by the power appointing him, within thirty days after such removal, or within thirty days after notice in writing to such appointing power given by some member of the board, or by the corporation hereinafter mentioned, of such death or resignation, and a certificate of every such appointment shall be filed as hereinbefore required. Except as otherwise provided by law, the terms of office of the commissioners shall determine and expire with the performance of their functions as hereinabove prescribed.

§ 136. Abandonment or change of route; new commissioners; their powers and proceedings.—Any corporation heretofore organized or hereafter to be organized under this article, its successor or assigns, which shall have constructed or put in operation a railway upon a part and not upon the whole of the route fixed, determined and located for such railway by a board

of commissioners, may at any time apply for authority to abandon any portion of the route upon which the railway shall not have been theretofore constructed or shall not then be in operation, with or without a change and relocation of such portion, and with or without extension of the portion not abandoned, or of any part thereof. Such application shall be made by petition in writing, addressed by such corporation to the board of supervisors of the county in which such portion of the route so desired to be changed or abandoned shall be situated, which is not within the limits of any city, or if such route, or any part thereof, shall be within the limits of a city, to the mayor of the city, for the route or portion thereof within such city. Five commissioners may be appointed pursuant to such an application as hereinafter provided, who shall be residents of the county or city and who shall have full power as herein provided. When such application is made by a corporation heretofore organized such commissioners may be appointed within thirty days after presentation of the same by such board of supervisors, or, as the case may be, by such mayor. When such application is made by a corporation hereafter to be organized under this article, such board of supervisors, or, as the case may be, such mayor, may within thirty days after presentation of such application, indorse thereon their or his approval and direction, that it may be presented to the supreme court in the manner provided in section 120 of this article, and such court may thereupon appoint such commissioners. Within ten days after his appointment each commissioner so appointed shall take, subscribe and file the oath and give and file the bond prescribed by section 121 of this article; and if any one so appointed shall not comply with this requirement, he shall be deemed to have declined to accept such appointment, and to have made a vacancy which the appointing power shall fill by another appointment as herein* provided. Within fifteen days after such appointments shall have been so made, the commissioners shall meet at some convenient place in such county and complete their organization as a board with appropriate officers. Such board shall have all the authority conferred by law upon commissioners appointed, or authorized to be appointed under this article. Before proceeding to hear the application of the corporation, the board shall give such public notice

* So in the original.

as it may deem most proper and effective of the time and place of the hearing. Within thirty days after completing their organization such board shall hear the application of the corporation, and all parties who may be interested therein, and within sixty days after their organization they shall determine whether any part of such route should be authorized to be abandoned, or should be changed and relocated with or without extension or extensions. If the board shall determine that no abandonment of any part of the route should be allowed, and that no change and relocation of any part thereof should be effected, and that no extension should be made, the board should dismiss the application. If the board shall determine that an abandonment of any portion of the route should be allowed, or that any change in or extension thereof should be made, the board shall proceed to authorize and require the same upon such conditions as the board shall seem proper, and with or without extension of the remainder of the route or of any part thereof, by fixing, determining and locating the route or routes of the extension or extensions, if any, and by directing the abandonment of the part of the route theretofore located, but by the board allowed to be abandoned, if any, and by fixing, determining and relocating the part of the route theretofore located, but by the board changed, if any; and the board shall cause to be made in duplicate a survey and map of the route so changed and fixed, determined and located. Neither such corporation nor any assign or successor thereof shall thereafter have any authority, by reason of any thing done under this article to operate or construct any railway upon any portion of the route by the board so required to be abandoned. The board shall also fix and determine the time within which the railway by it authorized and required upon any portion of the route so changed, shall be reconstructed and ready for operation. If the railway or any portion of the route not by the board changed or allowed to be abandoned, shall not have been theretofore constructed and made ready for operation, the board may extend, and fix and determine anew the time within which such railway shall be completed, but such extension of time shall not be for a longer period than that originally allowed by law for the completion thereof. If the board shall have determined that any portion of the route theretofore located should be allowed to be abandoned, with or without a change or relocation thereof or any part thereof, and with or without extension, or if the board shall have extended the time within which

such railway shall be completed, the board shall make a report in writing in accordance with the determination so made, describing the portion of the route, if any there be, as so fixed, determined and located anew, and the part, if any there be, of the route allowed to be abandoned, and stating the period of time, if any, by the board fixed and determined within which such corporation shall construct and complete the railway theretofore authorized or by it authorized to be constructed, and prescribing that a failure by the corporation, its successors or assigns, to complete it within the time, if any so limited, shall work a forfeiture to the supervisors of the county if no part of the road is within a city, or in any city, to such city, of the rights and franchises of such corporation with respect to that portion of the route so fixed, determined and located anew, and with respect to the then authorized extension or extensions, if any there be of said route, upon which a railway shall not be constructed within the time so limited; but the time, if any, unavoidably consumed by the pendency of legal proceedings, shall not be deemed a part of any period of time limited in this article, and any recital of any forfeiture of any of the rights or franchises prescribed by any commissioners heretofore appointed, to be to the mayor, aldermen and commonalty of the city of New York, shall be as effectual for any and all purposes as if such forfeiture had been in terms recited to be to the board of supervisors of the county of New York. Such report shall be signed in duplicate by at least a majority of the then members of the board, and there shall be thereto annexed the survey and map as hereinabove directed, showing the line and location of each and all the routes, with or without the extension, as fixed, determined and located, and showing also the parts or part, if any there shall be, of the route or routes as theretofore fixed, determined and located, but by the board allowed to be abandoned. Within ten days after so signing such report the board shall cause the same to be filed in the office of the secretary of state, and the duplicate thereof in the office of the clerk of the county wherein such railway shall be located; and thereupon the corporation making such application, its successors or assigns, is and shall be authorized to construct, maintain and operate a steam railway for the transportation of passengers, mail and freight, upon the route or routes so fixed, determined and located, and in said report described, but the construction or operation of a railway upon any new location or selection of route is not and shall

not be thus authorized except upon the condition that the consent of the owners of one-half in value of the property bounded on, and the consent also of the local authorities having control of that portion of a street or highway upon which it is proposed to construct or operate such railway be first obtained, or in case the consent of such property owners can not be obtained, that the determination of three commissioners, to be upon application appointed by the general term of the supreme court, in the district in which such railroad is proposed to be constructed, be given after a hearing of all parties interested that such railway ought to be constructed or operated, which determination, confirmed by the court, may be taken in lieu of the consent of the property owners. Such corporation is and the successors and assigns thereof shall be authorized to maintain and operate all the railroads and the appurtenances thereof by it or them theretofore constructed upon any portion of a route or routes which shall have been located by commissioners under this article, and to complete within the time in and by such report so extended, fixed and determined anew, and thereafter to maintain and operate, the railway and the appurtenances, upon so much of the route or routes theretofore fixed, determined and located as shall not have been so authorized and required to be abandoned, and with the same rights and effect, in all respects, as if such extended period of time had been originally fixed and determined, and in the original certificate of incorporation of such corporation recited, for completing such railway and putting it in operation. The other terms and conditions in and by such certificate mentioned and prescribed, except as the same are hereinbefore modified or may be modified by the board as hereinabove authorized, shall apply to the railway herein authorized to be constructed and operated upon the route or routes as so changed, fixed, determined and located, with the same force and effect as if such route or routes, as finally so changed and located, had been in and by such articles or certificates themselves prescribed. If a new location or extension of routes shall be fixed and determined by commissioners who shall have been appointed by the court pursuant to this section, they shall also ascertain and determine the aggregate pecuniary damages arising from the diminution of value of the property bounded on that portion of the street or highway upon the line of such new location or extension and of each parcel of real property so bounded, and their proceedings thereupon shall be conducted in the same

manner and upon the like notice as the proceedings for that purpose before the commissioners specified in section 125 and shall make to the supreme court the report required by section 133, and thereupon the same proceedings shall be had as are provided for in such last named section. Each commissioner shall be paid for his services at the rate of ten dollars per day for each day of actual service as such commissioner, and all reasonable expenses incurred by him in or about any of the matters referred to such board, to be paid by the corporation making the application so heard and determined. No corporation shall be authorized under this section to extend, abandon or change the location of its route or any part thereof, where the greater portion of the route or routes is or shall be in that portion of the city of New York south or west of Harlem river, or of any route or part thereof in the city of Brooklyn or county of Kings, or to construct, extend, abandon or change the location of any railway or route for a railway over, under, through or across any street, avenue, place or lands south of One Hundred and Twenty-eighth street or west of Third avenue in that portion of the city of New York south or west of Harlem river, or where a railway might not by law be constructed, or was not by law authorized to be by a board of commissioners located on the 5th day of June, 1888.

As amended, ch. 676, Laws 1892.

§ 137. Increased deposit, when and how acquired.— In case any of the securities deposited in lieu of money as provided in section one hundred and twenty-five, shall in the opinion of the county treasurer or trust company with whom they may be deposited, fall below their actual value at the time of deposit the county treasurer or trust company shall call upon such railway corporation to substitute therefor other securities equivalent at their par or market value to the amount in lieu of which the securities for which they are to be substituted were deposited, and in case such other securities shall not be furnished, the county treasurer or trust company shall call upon such corporation to furnish as a substitute, and it shall so furnish an amount of money equal to the amount in lieu of which the securities first above referred to were deposited.

138. Trains to come to full stop, etc.— All trains upon elevated railroads shall come to a full stop before any passenger

shall be permitted to leave such trains; and no train on such railroad shall be permitted to start until every passenger desiring to depart therefrom shall have left the train, provided such passenger has manifested his or her intention to so depart by moving toward or upon the platform of any car; nor until every passenger upon the platform or station at which such train has stopped, and desiring to board or enter such cars, shall have actually boarded or entered the same, but no person shall be permitted to enter or board any train after due notice from an authorized employee of such corporation that such train is full and that no more passengers can be then received.

139. Gates.—Every car used for passengers upon elevated railroads shall have gates at the outer edges of its platforms, so constructed that they shall, when opened, be caught and held open by such catch or spring as will prevent their swinging and obstructing passengers in their egress from or ingress to such cars; and every such gate shall be kept closed while the car is in motion; and when the car has stopped and a gate has been opened, the car shall not start until such gate is firmly closed.

§ 140. Penalty for violation of this article.—Any elevated railroad corporation that shall fail or neglect to comply with or enforce the provisions of this article, shall upon the petition of any citizen to any court of record, and upon due notice to such corporation, and proof of such failure or neglect, pay to the clerk of the court wherein such petition was made, a sum not less than two hundred and fifty nor more than one thousand dollars, as such court may direct by its order. The sum so ordered to be paid shall be paid by such clerk of the court to the county treasurer, and shall be distributed by such treasurer equally among the public hospitals of the county in which the proceeding is had, at such time as the board of supervisors or board of aldermen in any such county shall direct. Nothing in this section shall relieve elevated railroad corporations from any liability under which they may now be held by existing laws for damages to persons or property.

As amd. chap. 676 Laws 1892.

§ 141. Sections to be printed and posted.—The officers and board of directors of such railroad corporations shall cause copies of sections one hundred and thirty-eight, one hundred and thirty-nine and one hundred and forty to be printed conspicuously and posted in the depots or stations and in each car belonging to them.

§ 142. Extension of time.—The time within which any act required to be done under this article may be extended by the supreme court for good cause shown, for one year, and but one extension will be granted. Any company that has heretofore constructed or is now operating an elevated railroad shall be deemed to have been duly incorporated notwithstanding any failure on the part of commissioners to insert in its articles of association provisions complying with statutory requirements relative to such articles.

As amd. chap. 676 Laws 1892.

ARTICLE VI.

THE BOARD OF RAILROAD COMMISSIONERS.

- SECTION** 150. Appointment and term of office of railroad commissioners.
 151. Suspension from office.
 152. Secretary and marshal of board.
 153. Additional officers; their duties.
 154. Oath of office; eligibility of officers of board.
 155. Principal officer and meetings of board.
 156. Quorum of board.
 157. General powers and duties of board.
 158. Reports of railroad corporations.
 159. Investigation of accidents.
 160. Recommendations of board where law has been violated.
 161. Recommendations of board when repairs or other changes necessary.
 162. Legal effect of recommendation and action of the board.
 163. Corporation must furnish necessary information.
 164. Attendance of witnesses and their fees.
 165. Fees to be charged and collected by the board.
 166. Annual report of board.
 167. Certified copies of papers filed to be evidence.
 168. Acts prohibited.
 169. Salaries and expenses of members and officers of the board.
 170. Total annual expense to be borne by railroads.
 171. Application of this article.

§ 150. Appointment and term of office of railroad commissioners.—There shall continue to be a board of railroad commissioners, consisting of three competent persons, one of whom shall be experienced in railroad business, appointed by the governor, by and with the advice and consent of the senate, each of whom shall hold office for the term of five years, and until his successor shall have been appointed and shall have qualified. Any commissioner shall in like manner be appointed upon the expi-

tion of the term of any commissioner; and when any vacancy shall occur in the office of any commissioner, a commissioner shall in like manner be appointed for the residue of the term. If the senate shall not be in session when the vacancy occurs, the governor shall appoint a commissioner to fill the vacancy, subject to the approval of the senate when convened.

As amd. chap. 676 Laws 1892.

§ 151. Suspension from office.—Any commissioner may be suspended from office by the governor upon written charges preferred. The governor shall report such suspension and the reasons therefor to the senate at the beginning of the next ensuing session, and if a majority of the senate shall approve the action of the governor, such commissioner shall be removed from office and his office become vacant.

§ 152. Secretary and marshal of board.—The board shall have a secretary and a marshal who shall be appointed by it and serve during its pleasure. The secretary shall keep a full and faithful record of the proceedings of the board, and be the custodian of its records, and file and preserve at its general office all books, maps, documents and papers intrusted to his care, and be responsible to the board for the same. Under the direction of the board he shall be its chief executive officer, shall have general charge of its office, superintend its clerical business, conduct its correspondence, be the medium of its decisions, recommendations, orders and bequests, prepare for service such papers and notices as may be required of him by the commissioners, and perform such other duties as the board may prescribe, and he shall have the power to designate from time to time one of the clerks appointed by the board to act as assistant secretary during his absence from the county of Albany, and the clerk so designated for the time designated shall within the county of Albany only, possess the powers conferred by this section upon the secretary of the board.

As amended ch. 534, Laws 1892.

§ 153. Additional officers; their duties.—The board may also appoint, to serve during its pleasure, the following officers or

any of them: An accountant, who shall be thoroughly skilled in railroad accounting, and who shall, under the direction of the board, make examinations of the books and accounts of railroad and other corporations, and supervise the quarterly and annual reports made by railroad corporations to the board, and collect and compile railroad statistics, and perform such other duties as the board may prescribe. An inspector, who shall be a civil engineer, skilled in railroad affairs, who shall make such inspections of railroads and other matters relating thereto, as directed by the board, and report to it. Such additional clerical force as may be necessary for the transaction of its business. The board may also employ engineers, accountants and other experts whose services they may deem to be of temporary importance in conducting any investigation authorized by law.

! As amended, chapter 534, Laws 1892.

§ 154. Oath of office; eligibility of officers of board.—

Each commissioner, and every person appointed to office by the board, shall, before entering upon the duties of his office, take and subscribe the constitutional oath of office. No person shall be appointed to or hold the office of commissioner or be appointed by the board to, or hold any office, place or position under it who holds any official relation to any railroad corporation, or owns stock or bonds therein, or who is in any manner pecuniarily interested in any firm or corporation having business relations with any such corporation.

§ 155. Principal office and meetings of board.—The principal office of the board shall be at the city of Albany, in rooms designated by the capitol commissioners, and it may have a branch office at the city of New York, and one at the city of Buffalo; and the board, or a quorum thereof, shall meet at least once a month during the year at the office in Albany. The board shall have an official seal, to be prepared by the secretary of state in accordance with law, and its offices shall be supplied with necessary postage, stationery, office furniture and appliances, to be paid for as other expenses authorized by this article, and it shall have prepared for it by the state the necessary books, maps and statistics, incidentally necessary for the discharge of its duties.

§ 156. **Quorum of board.**—Two of the commissioners shall constitute a quorum for the transaction of any business, or the performance of any duty of the board and may hold meetings thereof at any time or place within the state. All examinations or investigations made by the board may be held and taken by and before any one of the commissioners or the secretary of the board, by the order of the board, and the proceedings and decisions of such single commissioner or secretary, shall be deemed to be the proceedings and decisions of the board, when approved and confirmed by it.

As amended ch. 534, Laws 1892.

§ 157. **General powers and duties of board.**—The board shall have power to administer oaths in all matters relating to its duties, so far as necessary to enable it to discharge such duties, shall have general supervision of all railroads and shall examine the same and keep informed as to their condition, and the manner in which they are operated for the security and accommodation of the public and their compliance with the provisions of their charters and of law. The commissioners or either of them in the performance of their official duties may enter and remain during business hours in the cars, offices and depots, and upon the railroads of any railroad corporation within the state, or doing business therein; and may examine the books and affairs of any such corporation and compel the production of books and papers or copies thereof, and the board may cause to be subpoenaed witnesses, and if a person duly subpoenaed fails to obey such subpoena without reasonable cause, or shall without such cause refuse to be examined, or to answer a legal or pertinent question, or to produce a book or paper which he is directed by subpoena to bring, or to subscribe his deposition after it has been correctly reduced to writing, the board may take such proceedings as are authorized by the Code of Civil Procedure upon the like failure or refusal of a witness subpoenaed to attend the trial of a civil action before a court of record or a referee appointed by such court. The board shall also take testimony upon, and have a hearing for and against any proposed change of the law relating to any railroad, or of the general railroad law, if requested to do so by the legislature, or by the committee on railroads of the senate or the assembly, or by

the governor, and may take such testimony and have such a hearing when requested to do so by any railroad corporation, or incorporated organization representing agricultural or commercial interests in the state, and shall report their conclusions in writing to the legislature, committee, governor, corporation or organization making such request; and shall recommend and draft such bills as will in its judgment protect the people's interest in and upon the railroads of this state.

§ 158. Reports of railroad corporations.—The board shall prescribe the form of the report required by the railroad law to be made by railroad corporations, and may from time to time make such changes and additions in such form, giving to the corporation six months notice before the expiration of any fiscal year, of any changes or additions which would require any alteration in the method or form of keeping their accounts, and on or before September fifteenth in each year, shall furnish a blank form for such report. When the report of any corporation is defective, or believed to be erroneous, the board shall notify the corporation to amend the same within thirty days. The originals of the reports, subscribed and sworn to as prescribed by law, shall be preserved in the office of the board.

§ 159. Investigation of accidents.—The board shall investigate the cause of any accident on any railroad resulting in loss of life or injury to persons, which in their judgment shall require investigation, and include the result thereof in their annual report to the legislature. Before making any such examination or investigation, or any investigation or examination under this article, reasonable notice shall be given to the corporation, person or persons conducting and managing such railroad of the time and place of commencing the same. The general superintendent or manager of every railroad shall inform the board of any such accident immediately after its occurrence. If the examination of the books and affairs of the corporation, or of witnesses in its employ, shall be necessary in the course of any examination or investigation into its affairs, the board, or a commissioner thereof, shall sit for such purpose in the city or town of this state where the principal business office of the corporation is situated if re-

quested so to do by the corporation; but the board may require copies of books and papers, or abstracts thereof, to be sent to them to any part of this state.

§ 160. Recommendations of board, where law has been violated.—If, in the judgment of the board, it shall appear that any railroad corporation has violated any constitutional provision of law, or neglects in any respect to comply with the terms of the law by which it was created, or unjustly discriminates in its charges for services, or usurps any authority not granted by law, or refuses to comply with the provisions of any law, or with any recommendation of the board, it shall give notice thereof in writing to the corporation, and if the violation, neglect or refusal is continued after such notice, the board may forthwith present the matter to the attorney-general, who shall take such proceedings thereon as may be necessary for the protection of the public interests.

§ 161. Recommendations of board when repairs or other changes are necessary.—If in the judgment of the board, after a careful personal examination of the same, it shall appear that repairs are necessary upon any railroad in the state, or that any addition to the rolling stock, or any addition to or change of the station or station-houses, or that additional terminal facilities shall be afforded, or that any change of the rates of fare for transporting freight or passengers or in the mode of operating the road or conducting its business, is reasonable and expedient in order to promote the security, convenience and accommodation of the public, the board shall give notice and information in writing to the corporation of the improvements and changes which they deem to be proper, and shall give such corporation an opportunity for a full hearing thereof, and if the corporation refuses or neglects to make such repairs, improvements and changes within a reasonable time after such information and hearing, and fails to satisfy the board that no action is required to be taken by it, the board shall fix the time within which the same shall be made, which time it may extend. It shall be the duty of the corporation, person or persons owning or operating the railroad to comply with such decisions and recommendations of the board as are just and

reasonable. If it fails to do so the board shall present the facts in the case to the attorney-general for his consideration and action, and shall also report them in its annual or in a special report to the legislature.

§ 162. Legal affect of recommendations and action of the board.—No examination, request or advice of the board, nor any investigation or report made by it, shall have the effect to impair in any manner or degree the legal rights, duties or obligations of any railroad corporation, or its legal liabilities for the consequence of its acts, or of the neglect or mismanagement of any of its agents or employes. The supreme court at special term shall have power in its discretion, in all cases of decisions and recommendations by the board which are just and reasonable to compel compliance therewith by mandamus, subject to appeal to the general term and the court of appeals, and upon such appeal, the general term and the court of appeals may review and reverse upon the facts as well as the law.

As amended ch. 676, Laws 1892.

§ 163. Corporations must furnish necessary information.—Every railroad corporation shall, on request, furnish the board any necessary information required by them concerning the rates of fare for transporting freight and passengers upon its road and other roads with which its business is connected, and the condition, management and operation of its road, and shall, on request, furnish to the board copies of all contracts and agreements, leases or other engagements entered into by it with any person or corporation. The commissioners shall not give publicity to such information, contracts, agreements, leases or other engagements, if, in their judgment, the public interests do not require it, or the welfare and prosperity of railroad corporations of the state might be thereby injuriously affected.

§ 164. Attendance of witnesses and their fees.—All subpoenas shall be issued by the president of the board, or by any two members thereof, and may be served by any person of full age authorized by the board to serve the same. The fees of wit-

nesses before the board shall be two dollars for each day's attendance, and five cents for every mile of travel by the nearest generally traveled route in going to and returning from the place where the attendance of the witness is required, and the fees shall be audited and paid by the comptroller on the certificate of the secretary of the commission.

§ 165. Fees to be charged and collected by the board.

—The board shall charge and collect the following fees: For copies of papers and records not required to be certified, or otherwise authenticated by the board, ten cents for each folio of one hundred words; for certified copies of official documents filed in its office, fifteen cents for each folio, and one dollar for every certificate under seal affixed thereto; for each certified copy of the quarterly report made by a railroad corporation to the board, fifty cents; for each certified copy of the annual report of the board, one dollar and fifty cents; for certified copies of evidence and proceedings before the board, fifteen cents for each folio. No fees shall be charged or collected for copies of papers, records or official documents, furnished to public officers for use in their official capacity, or for the annual reports of the board in the ordinary course of distribution. All fees charged and collected by the board belong to the people of the state, and shall be paid quarterly, accompanied with a detailed statement thereof into the treasury of the state to the credit of the general fund.

§ 166. Annual report of board.—The board shall make an annual report on or before the second Monday in January in each year, which shall contain:

1. A record of their meetings and an abstract of their proceedings during the preceding year.

2. The result of any examination or investigation conducted by them.

3. Such statements, facts and explanations as will disclose the actual workings of the system of railroad transportation in its bearing upon the business and prosperity of the state, and such suggestions as to the general railroad policy of the state, of the

amendment of its laws, or the condition, affairs or conduct of any railroad corporation, as may seem to them appropriate.

4. Drafts of all bills submitted by them to the legislature and the reasons therefor.

5. Such tables and abstracts of all the reports of all the railroad corporations as they may deem expedient.

6. A statement in detail of the traveling expenses and disbursements of the commissioners, their clerks, marshal and experts.

Five hundred copies of the report with the reports of the railroad corporations of the state, in addition to the regular number prescribed by law, shall be printed as a public document of the state, bound in cloth for the use of the commissioners, and to be distributed by them in their discretion to railroad corporations and other persons interested therein.

167. Certified copies of papers filed to be evidence.—

Copies of all official documents filed or deposited according to law in the office of the board, certified by a member of the board or the secretary thereof to be true copies of the originals under the official seal of the board, shall be evidence in like manner as the originals.

§ **168. Acts prohibited.**—No railroad commissioner shall directly or indirectly, solicit or request from, or recommend to any railroad corporation, or any officer, attorney or agent thereof, the appointment of any person to any place or position nor shall any railroad corporation, its attorney or agent, offer any place, appointment or position or other consideration to such commissioners, or either of them, nor to any clerk or employee of the commissioners or of the board; neither shall the commissioners or either of them, nor their secretary, clerks, agents, employees or experts, accept, receive or request any pass from any railroad in this state, for themselves or for any other person, or any present, gift or gratuity of any kind from any railroad corporation; and

the request or acceptance by them, or either of them, of any such place or position, pass, presents, gifts or other gratuity shall work a forfeiture of the office of the commissioner or commissioners, secretary, clerk or clerks, agent or agents, employe or employes, expert or experts, requesting or accepting the same. .

§ 169. Salaries and expenses of members and officers of the board.—The annual salary of each commissioner shall be eight thousand dollars; of the secretary six thousand dollars; of the marshal fifteen hundred dollars, of the accountant and of the inspector such sum as the board may fix, not exceeding three thousand dollars each; of the clerical force such sums respectively as the board may fix. In the discharge of their official duties, the commissioners, their officers, clerks and all experts and agents whose services are deemed temporarily of importance, shall be transported over the railroads in this state free of charge upon passes signed by the secretary of state and the commissioners shall have reimbursed to them the necessary traveling expenses and disbursements of themselves, their officers, clerks, and experts, not exceeding in the aggregate five hundred dollars per month. All salaries and disbursements shall be audited and allowed by the comptroller, and paid monthly by the state treasurer upon the order of the comptroller out of the funds provided therefor.

As amended ch. 534, Laws 1892.

§ 170. Total annual expense to be borne by railroads.—The total annual expense of the board authorized by law, excepting only rent of offices and the cost of printing and binding the annual reports of the board as provided by law, shall not exceed fifty thousand dollars; and shall be borne by the several corporations owning or operating railroads according to their means, to be apportioned by the comptroller who, on or before July first in each year, shall assess upon each of such corporations its proportion of such expenses, one-half in proportion to its net income for the fiscal year next preceding that in which the assessment is made, and one-half in proportion to the length of its main road

and branches, except that each corporation whose line of road lies partly within and partly without the state, shall in respect to its net income be assessed on a part bearing the same proportion to its whole net income that the line of its road within the state bears to the whole length of road, and in respect of its main road and branches shall be assessed only on that part which lies within the state. Such assessment shall be collected in the manner provided by law for the collection of taxes upon corporations.

As amended, chapter 534, Laws 1892.

§ 171. Application of this article.—The provisions of this article shall apply to all railroads within the state, and the corporations, receivers, trustees, directors or others, owning or operating the same or any of them, and to all sleeping and drawing-room car corporations, and to all other associations, partnerships or corporations engaged in transporting passengers or freight upon any such railroad as lessee or otherwise.

* Sections 180 to 183 of the Railroad Law repealed by chapter 676, Laws 1892.

SCHEDULE A.

ACTS REPEALED BY LAWS OF 1890, CHAPTER 565.*

Laws of	Chapter.	SECTIONS.
1836.....	316.....	1, 2.
1838.....	160.....	2, 3.
1838.....	161.....	All.
1839.....	218.....	1.
1846.....	155.....	1.
1846.....	215.....	17, 18.
1847.....	100.....	3, 4.

There are no pages 79 and 80

SCHEDULE B.

ACTS REPEALED BY LAWS OF 1890, CHAPTER 563.

Revised Statutes. . . .	Part 1, chapter 18, title 3	All except section 5
Revised Statutes. . . .	Part 1, chapter 18, title 4	Sections 5 and 6

Laws of	Chapter	Section.
1796.	43.	10.
1811.	67.	4, 6, 8.
1847.	210.	3.
1848.	37.	4, 7, 9, 23.
1848.	40.	4, 7, 9, 26.
1848.	265.	The last three lines of section 3 and all of sections 4 and 6.
1848.	259.	4.
1848.	319.	4, 9.
1850.	140.	3, 48.
1853.	117.	4, 7, 9, 26.
1853.	135.	5, 11.
1854.	112.	The last two lines of section 3.
1854.	232.	4, 5, 7, 9, 26.
1854.	269.	4, 6.
1857.	29.	2.
1857.	546.	2, 4, 7, 9.
1857.	776.	6, 8.
1859.	168.	13.
1861.	149.	4.
1862.	438.	3, 4.
1866.	697.	5.
1867.	937.	1.
1867.	960.	4.
1867.	971.	9.
1867.	974.	3.
1869.	917.	All after the word "companies" in the last five line of subdivision 2
1870.	135.	1 and 2. [of section 2.
1872.	146.	1.
1872.	248.	11.
1872.	820.	12, 16, 18.
1873.	397.	4, 8, 9.
1873.	469.	5.
1873.	616.	4.
1874.	143.	4, 7, 9, 15.

SCHEDULE OF LAWS REPEALED—(*Continued*):

Laws of	Chapter	SECTIONS.
1874.....	288.....	2, 3.
1875.....	58.....	All.
1875.....	267.....	5, 10.
1875.....	343.....	8.
1875.....	611.....	2, 4, 27.
1877.....	158.....	1.
1877.....	228.....	6.
1878.....	203.....	3.
1881.....	22.....	1.
1881.....	468.....	Last paragraph of section 4.
1882.....	273.....	3.
1882.....	290.....	All.
1884.....	367.....	4.
1885.....	489.....	2.
1885.....	505.....	4.
1886.....	236.....	6, 8, 9.
1887.....	317.....	6.
1887.....	450.....	1.
1887.....	501.....	3.
1888.....	293.....	4, 7.
1888.....	306.....	All.
1888.....	391.....	5.
1888.....	462.....	2.

SCHEDULE C.

ACTS REPEALED BY LAWS OF 1890, CHAPTER 564.

Revised Statutes\ . . .	Part I, chapter 18, title 4	Section 5.
Revised Statutes. . . .	Part I, chapter 18, title 4	All except sections 5 and 6.

Laws of	Chapter.	SECTIONS.
1811.....	67.....	3, 5, 7.
1822.....	213.....	All.
1842.....	165.....	All.
1847.....	210.....	38, 39, 40, 41, 43, 44, 45, 51.
1847.....	405.....	All.
1848.....	37.....	3, 5, 6, 8, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22.
1848.....	40.....	3, 5, 6, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27.
1848.....	259.....	2, 5, 12, 13, 16.
1848.....	265.....	8, 10.
1850.....	140.....	4, 5, 7, 8, 9, 10, 11, 48.
1852.....	228.....	3 to 14, both inclusive.
1853.....	117.....	3, 5, 6, 8, 10 to 25, both inclusive.
1853.....	135.....	3, 4, 6, 7, 8, 9, 10, 14, 15, 16, 17.
1853.....	333.....	2.
1853.....	395.....	All of section 6 to and including the word "trustees" in line 7.
1853.....	502.....	All.
1854.....	232.....	3, 5, 6, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 25, 27, 28.
1855.....	425.....	First and last sentences of section 5.
1857.....	546.....	3, 5, 6, 8 and 11 to 20, both inclu- sive.
1857.....	776.....	7.
1860.....	269.....	All.
1861.....	149.....	2, 5, 6, 7, 9.
1863.....	134.....	All.
1864.....	517.....	2.
1866.....	73.....	All.
1867.....	419.....	2.
1897.....	480.....	All.
1867.....	971.....	First two sentences of 5, and 6, 7, 8.
1867.....	974.....	4 to 11, both inclusive.
1868.....	290.....	All.

SCHEDULE OF LAWS REPEALED—(Continued):

Laws of	Chapter	SECTIONS.
1870.....	773.....	All.
1872.....	248.....	3, last three sentences of 4, and 7 8, 9, 10.
1872.....	146.....	All.
1872.....	611.....	All.
1872.....	820.....	4, 9, 10, 13, 14, 15.
1873.....	151.....	All.
1873.....	469.....	All but section 5.
1873.....	737.....	7, 8.
1874.....	143.....	3, 5, 6, 8, 10, 11, 13, 14, 17.
1874.....	288.....	4.
1874.....	430.....	All.
1875.....	4.....	All.
1875.....	343.....	9.
1875.....	606.....	10 to 15 both inclusive.
1875.....	611.....	5, 10, 11, 12, 13 to 26 both inclu sive and 28, 29.
1877.....	228.....	3, 4, 5.
1878.....	163.....	1.
1878.....	203.....	4, 5, 6, 7, 8, 9, 10, 11, 12, 39, 43
1878.....	264.....	All. [44
1879.....	393.....	All.
1879.....	395.....	All.
1879.....	413.....	All.
1880.....	155.....	All.
1880.....	182.....	1.
1880.....	225.....	All.
1880.....	510.....	All.
1881.....	468.....	4, 7, 8, 10, 11, 12.
1881.....	599.....	1.
1884.....	252.....	19.
1884.....	397.....	All.
1885.....	141.....	All.
1885.....	171.....	All.
1885.....	489.....	All except section 2.
1886.....	586.....	All.
1888.....	293.....	3.
1888.....	462.....	3, 4, 5.

TABLE A showing what laws the General Railroad Act of 1890, Chapter 565, is based upon.

Sec.	Based upon laws of	Chap.	Secs.	Sec.	Based upon Laws of	Chap.	Secs.
2	1850.	140	1, 2.	32	1850.	140	44.
	1866.	967	1, 2.		1854.	282	8.
	1871.	560	5, 6.		1864.	582	2.
3	1872.	829	1.	33	1850.	140	40.
4	1847.	404	3.		1884.	439	30.
	1850.	140	28.		1889.	242	1.
	1875.	586	2.	34	1850.	140	36.
	1875.	606	26.		1875.	606	30.
	1882.	273	2.	35	1847.	222	1.
5	1846.	155	1.	36	1879.	415	1.
	1850.	140	47.		1884.	439	5.
	1867.	775	1.	37	1866.	697	3.
6	1838.	161	1, 2.		1869.	917	3.
	1850.	140	23, 45.		1871.	560	6.
7	1847.	272	3.		1881.	470	1.
	1847.	404	1, 2, 3.		1883.	386	1.
	1850.	140	13, 14, 15, 16, 17, 18, 19, 20, 21.		1884.	422	2.
	1851.	19	3.	38	1887.	536	1.
	1854.	282	4, 5, 6, 7.	39	1850.	140	33.
	1867.	515	1.	40	1857.	185	1.
	1871.	560	6.		1850.	140	35.
	1875.	606	17, 24.	41	1875.	606	29.
8	1850.	140	25.	42	1858.	125	1, 2, 3, 4
	1881.	148	1.	43	1865.	246	1.
9	1836.	316	1, 2.	43	1850.	140	30.
10	1886.	403	1.		1875.	606	27.
11	1850.	140	24.	44	1847.	272	6.
	1851.	19	4.		1850.	140	37.
12	1850.	140	6.	45	1884.	439	7.
13	1847.	272	4.	46	1854.	282	10, 11, 12.
	1847.	404	1.		1857.	444	3, 4.
	1850.	140	23.	47	1868.	573	1, 2, 3, 4, 5, 6.
	1854.	282	17.	48	1847.	270	8, 9.
	1855.	478	1.	49	1864.	582	3.
	1871.	560	2.		1884.	439	1, 2, 4, 6, 8.
14	1857.	19	2.		1887.	616	2, 3.
15	1851.	19	1.	50	1887.	616	4.
	1854.	282	13.	51	1887.	616	1.
	1872.	843	2.		1889.	76	1.
16	1880.	532		52	1847.	100	3.
17	1881.	468	1, 2.		1881.	296	
18	1881.	468	5.	53	1850.	140	46.
19	1881.	468	9.	54	1884.	193	1.
20	1880.	267	1.	55	1886.	605	1, 2, 3.
	1882.	140	1.	56	1850.	140	34.
*30	1850.	140	1.	57	1850.	140	31.
	1875.	606	16.	58	1863.	346	
31	1847.	272	5.		1880.	223	
	1850.	140	27.	70	1869.	917	1.
	1871.	560	6.		1875.	108	1.
					1875.	256	1, 2, 3.
				71	1869.	917	2.

* It will be noticed that the sections of the act of 1890, ch. 565, are not numbered consecutively, *e. g.*, Sec. 20 is followed by sec. 30; sec. 58 by sec. 70, etc.

GENERAL RAILROAD ACT OF 1890—(Continued):

Sec.	Based upon Laws of	Chap.	Secs.	Sec.	Based upon Laws of	Chap.	Secs.
72	1869.....	917	4.	125	1875.....	606	6, 42.
73	1869.....	917	3, 5.	126	1875.....	606	7.
74	1869.....	917	6.	127	1875.....	606	8.
75	1875.....	256	3.	128	1875.....	606	9.
76	1879.....	505	1.	129	1875.....	606	26.
77	1875.....	505	2.	130	1875.....	606	35.
78	1839.....	218	1.	131	1875.....	606	36.
..	1880.....	349	1.	132	1875.....	606	37.
79	1855.....	302	1.	133	1875.....	606	21.
80	1869.....	917	9.	134	1875.....	606	38.
81	1857.....	444	1.	135	1875.....	606	39.
82	1880.....	5		136	1875.....	606	39.
83	1889.....	236		137	1875.....	606	50.
..	1874.....	430		138	1881.....	399	1.
90	1884.....	252	1.	139	1881.....	399	2.
91	1884.....	252	3.	140	1881.....	399	3, 4.
..	1854.....	140		141	1881.....	399	5.
92	1884.....	252	4.	150	1882.....	353	1.
93	1886.....	65		151	1882.....	353	1.
..	1886.....	642		152	1882.....	353	1.
..	1889.....	281		..	1884.....	441	1.
..	1889.....	566		153	1882.....	353	12.
94	1884.....	252	4, 5, 6, 11.	..	1884.....	441	2, 3, 4.
95	1884.....	252	8.	154	1882.....	353	1.
96	1882.....	349		155	1882.....	353	2.
98	1884.....	252	9.	..	1884.....	421	2.
99	1884.....	252	10.	156	1882.....	353	3.
100	1873.....	432	1.	157	1882.....	353	4, 9.
..	1884.....	252	12.	158	1850.....	140	31.
..	1889.....	351		..	1882.....	353	10.
101	1884.....	252	13.	159	1882.....	353	4.
102	1884.....	252	14.	160	1882.....	353	5.
103	1884.....	252	15.	161	1882.....	353	6.
..	1885.....	305	1, 2.	162	1882.....	353	8.
104	1885.....	305	3.	163	1882.....	353	7.
105	1885.....	305	4.	164	1882.....	353	4.
106	1886.....	271		..	1884.....	353	1.
107	1888.....	549		165	1884.....	421	3, 4, 5, 6.
108	1888.....	560		166	1882.....	353	9.
109	1884.....	252	17.	167	1884.....	421	1.
120	1875.....	606	1.	168	1882.....	353	14.
121	1875.....	606	2.	169	1882.....	353	13.
122	1875.....	606	3.	..	1884.....	441	1, 2, 3.
123	1875.....	606	4.	170	1882.....	353	13.
124	1875.....	606	5.	171	1882.....	353	4.

NOTES OF JUDICIAL DECISIONS.*

SECTION	PAGE
1. The public character of railroad corporations...	87
2. Railway mortgages.....	88
3. Maintaining ferries.....	89
4. Consolidation, lease, etc.....	90
5. Stocks; stockholders; actions against stockholders, etc.....	90
6. Lands taken for public use; damages therefor; powers of commissioners, etc.....	92
7. Negligence by railway companies; contributory negligence..	95
8. Railway crossings; accidents at; signals....	98
9. Damage by fires caused by railroads.....	100
10. Damages by diversion of water courses.....	101
11. Obligations of railways to restore streets.....	101
12. Erection and maintenance of fences....	102
13. Railway tickets; rights and obligations of passengers.....	103
14. Limitation of liabilities by common carriers.....	104
15. Costs in railway cases ...	104
16. Mandamus against railways.....	105
17. Abandonment of franchises.....	105
18. Heating cars by stoves ...	105
19. Liens on railroads; penalties....	105
20. Miscellaneous.....	106

§ 1. THE PUBLIC CHARACTER OF RAILROAD CORPORATIONS.

The right to use and build a railroad for public use is a franchise which can be derived only from the sovereign. *Ry. Co. v. D. & R. Canal Co.*, 3 C. E. Gr. (N. J.), 546. And a state has exclusive control over the construction and maintenance of railroads and internal improvements within her domains. *Id.*, 6 Vr. (N. J.), 89, 97.

Railways are public highways, to be conducted in furtherance of the objects of their creation. Mandamus will not lie to compel a company to perform its public duties. The decision as to the manner of performing those duties rests not with the company, but with the state tribunals. *R. R. Com'rs v. P. & O. C. R. R. Co.*, 63 Me., 269; 4 Neb., 457.

A railroad is a trustee for the public. 34 Md., 632. It cannot aliene its franchises or property so as to disable it from performing its public duties without legislative authority. 46 Md., 9. See 7 C. E. Gr. (N. J.), 130, 399; 8 Phila. (Pa.), 94.

The property of a railroad company is a trust fund in the hands of its directors for the benefit of its creditors. *S. F. & N. P. R. R. Co. v. Bee*, 48 Cal., 399; 81 id., 385.

* See, also, Notes to Chapter II. on Corporation; also Notes to Chapter III. on Rapid Transit Railways; eminent domain; procedure; damages, etc.

A corporation is a political trustee. By the acceptances of its franchises a trust arises in favor of the public; by acceptance of such trust the company tacitly obligates itself to discharge its duties faithfully and in conformity with the conditions upon which it was imposed. *Lumbard v. Stearns*, 4 Cush. (Mass.), 50; *People v. B. & R. T. Co.*, 23 Wend., 236, 254. See, also, 45 Barb., 136; 70 Mo., 69, 115; 27 Barb., 452; 4 Metc. (Mass.), 564.

Railroads are quasi public corporations, dedicated to public use. By accepting their charters they accept them with the duties and liabilities imposed by law. *McCoy v. Ry. Co.*, 13 Fed. R., 3.

The charter of a private corporation is an executed contract between it and the state which the legislature cannot repeal, repair, or alter so as materially to affect the interest of the corporators. *M., O. & R. R. Co. v. Gaster*, 24 Ark., 96; 20 id., 463.

Where the charter provided that on failure to commence the construction of a railroad within a given time "said corporation shall be dissolved," it was held that such failure did not *ipso facto* divest the company of its corporate character. *Day v. Ogdensburgh Ry.*, 11 N. Y. St. Rep., 335. See as to an attempt to release a company from forfeiture by failure to begin work. 11 N. Y. St. Rep., 450; 104 N. Y., 1, 43. Also, as to dissolution by forfeiture, 125 N. Y., 434, 513; 35 St. Rep., 872.

Acts authorizing companies to construct railways are considered as but enabling statutes which gives powers, but do not render compulsory or obligatory the exercise thereof. *Scottish N. E. Ry. Co. v. Stewart*, 3 Macq. H. L. Cas., 382; 5 Jur. N. S., 607; see 7 Railw. Cas., 459; 22 L. J. Q. B., 22.

Where a company was authorized to build a railroad fifty-six miles long, it resolved to build four miles and to abandon the rest. Held, that such resolution was illegal both as against landowners on the line and the shareholders in the company. *Cohen v. Wilkinson*, 12 Beav., 125; 18 L. J. Ch., 378.

A corporation can act only in conformity with the law creating it. *Beatty v. Marine Ins. Co.*, 2 Johns., 109. Directors can ratify unauthorized acts of an agent which are within the corporate powers. *Hoyt v. Thompson*, 19 N. Y., 207.

A plea ultra vires is not available to a corporation in defense to actions for violation of contracts, or wrong-doing. *Bissell v. Mich., etc., Ry.*, 22 N. Y., 258, 494; 122 id., 142, 435.

The capital of a railroad company is a trust fund for the benefit of its creditors, and a court of equity will pursue and lay hold of such property and effects and apply them to the payment of what it owes to its creditors. *M. & W. P. Ry. Co. v. Branch*, 59 Ala., 139; approved and followed in *Central Railroad Co. v. Pettus*, 113 U. S., 116.

Fifteen persons are now required to form a railroad corporation; nine directors are sufficient. See *R. H. & L. Ry. v. N. Y., L. E. & W. Ry.*, 44 Hun, 206; *aff'd*, 110 N. Y., 128; 16 St. Rep., 838.

§ 2. RAILWAY MORTGAGES.

A railway mortgage may include all after acquired property necessary for the use of the road. *Buck v. Seymour*, 46 Conn., 170. Such mortgages of after acquired real estate are subject to such liens as incumber it when it comes into the hands of the mortgagor. *Botsford v. N. H. & C. R. R. Co.*, 41 Conn., 464-9. See 32 Hun, 164; 96 N. Y., 49.

A railroad company may borrow money to finish its road, may mortgage as security future acquisitions as well as present possessions. *Pennock v. Coe*, 23 How., 117. It may mortgage all its franchises except that of being a corporation. *Branch v. A. & G. Ry.*, 3 Woods, 481.

If the trustees under a mortgage refuse to enforce the security, the bondholders may sue. *Owens v. O. C. Ry.*, 20 Fed. R. 10.

After trustees have begun proceedings to foreclose a railroad mortgage, a litigating bondholder can only be heard for his individual rights by coming into the pending suit by the trustees. *Stern v. W. C. Ry.*, 1 Fed. R., 555.

A mortgage of cars, engines, and of all personal property "in any way belonging or appertaining to the railroad of said company," was held not to include canal boats, though considered as such, and accessory to the business of the road. *Parish v. Wheeler*, 22 N. Y., 494.

A trustee under railroad mortgage cannot be removed because he declines to employ, on foreclosure, counsel selected by majority bondholders, and insists on acting as trustee under junior and senior mortgage. *Beadleson v. Knapp*, 13 Abb. Pr., N. S., 335. Such trustee cannot be compelled to contest validity of bonds unless bondholders to the specified amount request it in writing and provided means. *McHugh v. Ry. Co.*, 66 Barb., 612.

A mortgage for a larger sum than authorized is ratified by the corporation's receipt and retention of the money. *Elwell v. Ry. Co.*, 67 Barb., 83; 12 N. Y., 236; 20 Vt., 425.

Where an action by one trustee to foreclose a railroad mortgage at the request of the owners of a small number of the secured bonds, such action was stayed on motion of bondholders to a much larger amount, upon the ground that a foreclosure would terminate a profitable investment at seven per cent, on their giving security to purchase the bonds of those desiring to foreclose, and protecting their interests in other respects. *Tillinghast v. T. & B. Ry. Co.*, 48 Hun, 420; aff'd 121 N. Y., 648. See *Hollister v. Stewart*, 111 N. Y., 644; 109 U. S., 527.

An action lies against a railroad company upon its bonds secured by a mortgage, notwithstanding the fact that defendant has been consolidated with another company to which all its property has passed. *Gale v. T. & B. Ry. Co.*, 51 Hun, 470.

The exception of "mortgages" from the debts of the original companies which are imposed upon a consolidated company, does not include past due coupons on bonds secured by a mortgage. *Polyhemus v. Fitchburg Ry. Co.*, 50 Hun, 397. But see 50 Hun, 310.

Purchasers of railroad franchises under foreclosure do not, in the absence of a contract or statutory provision, assume the obligations of the original company. *Hoard v. Ches. Ry.*, 123 U. S., 222.

§ 3. MAINTAINING FERRIES.

A railroad company, for the purpose of increasing traffic, proposed to guarantee certain profits and secure the capital of an intended steam packet company, which was to act in connection with the railway. Held, *ultra vires*, and enjoined. *Coleman v. E. C. Ry. Co.*, 16 L. J. Ch., 73.

A company had authority to keep steam vessels for ferry purposes. Held, that such vessels, when not otherwise employed, might be used by the company for excursion trips to the sea. *Forest v. M. S. & L. Ry. Co.*, 30 Beav. 40. See 10 C. B., N. S., 675.

A railroad extending to the harbor in New York city may maintain a ferry from its terminus to a point ten miles therefrom, but cannot lease another distinct ferry to be operated from New York to Bay Ridge, L. I. *Starin v. Mayor*, 42 Hun, 549.

The legislature may authorize railroads to run steamers in connection therewith. *Freeman v. Ry. Co.*, 7 Hun, 122.

§ 4. CONSOLIDATION, LEASE, ETC.

Under the statute authorizing consolidation of railroads (L. 1869, c. 917, § 5), which provides that all debts and liabilities of either company, except mortgages, shall attach to and be enforced against the new corporation as though created by it; an action will lie against the new company upon bonds and coupons of one of the companies so consolidated, although they are secured by mortgage upon property of the original debtor corporation. *Polyhemus v. F. Ry.*, 123 N. Y., 502.

On consolidation, a new or consolidated company, unless restricted by law, succeeds to all the rights, privileges, and immunities of the companies forming it. *Zimmer v. The State*, 30 Ark., 677. A power conferred by charter upon a railroad company to consolidate with another company, is a contract between the state and the corporation, which cannot be impaired by subsequent legislation. *Id.* See 41 *id.*, 509, 542.

Consolidation of railroads under state authority, causes a dissolution of the companies consolidating, and creates a new corporation with new liabilities, derived from those extinguished. *Clearwater v. Merideth*, 1 Wall., 25; 16 Ind., 172. 109 U. S., 105. The consolidated company assumes the liabilities, and succeeds to the rights of the constituent companies. *Tysen v. Wabash Ry.*, 15 Fed. R., 793. But the consolidated company can claim no greater rights than its predecessor, and the contract determines the rights of all parties. *W. U. Tel. Co. v. K. P. Ry.*, 26 Int. Rev. Rec., 349. See 113 U. S., 465; 81 Leg. Int. (Pa.), 140.

A railroad authorized to lease another road may lease a road operated in another state, in the absence of statutory limitations in either state. *Day v. O. L. C. Ry.*, 107 N. Y., 129. See, also, 93 *id.*, 616; 89 *id.*, 75; 86 *id.*, 117; 34 Hun, 435; 35 *id.*, 227; 77 N. Y., 234; 46 *id.*, 653.

A railroad company cannot lease its road and franchises unless authorized by statute, because it can only perform authorized acts, and a lease is a violation of its duties to the state. *Thomas v. Ry. Co.*, 101 U. S., 71. See 8 Biss., 456.

A contract between parallel railroads whereby they were to preserve certain territory to each in which to prosecute the work of extension without interfering with each other, with the design to prevent an unprofitable war of construction, is not contrary to public policy. *Ives v. Smith*, 8 N. Y. S., 46.

An agreement between two competing railroads to divide their earnings from traffic between two points, for which they formerly competed, is contrary to public policy and cannot be enforced judicially. *Texas, etc. Ry. v. So. Pac. Ry.*, 41 La. Ann., 970; 6 So., 888.

§ 5. STOCKS; STOCKHOLDERS; ACTIONS AGAINST STOCKHOLDERS, ETC.

In an action for assessments, one cannot show, in defense, that the corporation has by misuser and non-user failed to comply with the provisions of its charter. *M. O. & R. R. R. Co. v. Cross*, 20 Ark., 443.

A subscription to the capital stock of a railroad corporation must be in writing. *P. & S. Ry. v. Gozzam*, 32 Pa. St., 340. A conditional subscription is absolute; the condition is invalid. *Cass v. P. F. & C. Ry.*, 80 id., 31; 48 id., 29.

One cannot, by forgery of certificates, obtain a valid transfer of shares of stock. *Barton v. N. S. Ry. Co.*, 38 Ch. D., 458. See, also, Notes to chapter II., Corporations.

An act, within the power of the corporation, irregularly done, may be ratified by the stockholders. *State v. Florida C. R. R. Co.*, 15 Fla., 690.

An action against a stockholder to recover subscriptions cannot be maintained by a company which has ceased to exist by failure to finish and operate its road within ten years from the time of filing its articles of association. *Sodus Bay Ry. v. Lapham*, 43 Hun, 314.

An action will lie to recover subscriptions on stock, although the charter provides that on failure to pay on requisition of the directors, the stock and installments paid thereon shall be forfeited to the company. *Selma & Tenn. R. R. Co. v. Tipton*, 5 Ala., 507.

A subscription of a municipal corporation to the capital stock of a railroad company is invalid unless authorized by the legislature. *M. & O. R. R. Co. v. Mayor, etc.*, 23 Ark., 300; 21 id., 305.

Subscriptions made on condition that the railroad run by a certain town or route are valid, and must be complied with to render the subscriptions binding. *Jacks v. Helena*, 41 Ark., 213; 10 Ind., 539; 12 id., 452. See 66 Me., 185.

One who subscribes an unconditional agreement to take a given number of shares of stock, becomes a stockholder, subject to the conditions in the subscription paper, to those imposed by the charter or by law, and liable to creditors. *Burr v. Wilcox*, 22 N. Y., 551; 26 id., 134; 31 id., 435; 38 Barb., 616; *Thompson's Liability of St.* (2d ed.), § 105.

A subscription for shares is a contract; and the interest thereby acquired by a stockholder is a sufficient consideration to uphold the contract. *Ry. Co. v. Gammon*, 5 Sneed (Tenn.) 567; *Fraud as a defence*, 2 Head (Tenn.), 23.

A sale of shares of stock in a railway carries with it the dividends declared by the company; if they are to be paid at a day subsequent to the transfer of the stock. *Burroughs v. N. C. R. R. Co.*, 67 N. Y., 376.

See as to indebtedness of contractor to laborer, for which corporation is liable, 1 Abb. Ct. App. Dec., 13; 12 N. Y., 628; 5 How. Pr., 454; 1 Lans., 68.

Where spurious stock was issued by the president of a corporation, it was held, that the corporation could maintain an action against all who claimed the stock to have it declared void. *N. Y. & N. H. Ry. Co. v. Schuyler*, 17 N. Y., 592.

The regularity of the organization of a corporation cannot be questioned collaterally. *Doyle v. P. P. Co.*, 44 Barb., 239; 26 N. Y., 75; 19 Abb. 416. Nor can it be alleged that a corporation has forfeited its charter or that question be considered in a collateral proceeding. Judicial proceedings are necessary to effect a dissolution. *In re Presby. Ch.*, 7 How. Pr., 476; 9 Wend., 357; 3 Sandf., 176; 4 Duer, 362.

Defects in the organization of a corporation will not avail a stockholder in an action to enforce a personal liability against him. 5 Bing., 521; 7 id., 110; 5 Barn. & Cress., 356; *Eaton v. Aspinwall*, 19 N. Y., 119. Nor can one

question corporate existence as a defense to a debt. 1 Kern., 108; nor in defense to an action upon a contract. *White v. Ross*, 15 Abb. Pr., 66; 17 Barb., 378; 17 Ohio, 47.

Acts or declarations of a director will not bind a corporation, unless the director was acting as agent therefor. *Soper v. Buf. & R. R. Co.*, 19 Barb., 310; 20 Ark., 443; 17 Ga., 574.

Surprise and fraud upon the part of the electors is ground for avoiding an election, and all acts of the corporators which bear the appearance of trick, secrecy or fraud will be held invalid. *Peo. v. Alb. & S. R. R. Co.*, 1 Lans., 308.

Where a syndicate advanced \$18,000,000 to build a railroad, and received \$50,000,000 of paid up stock and \$15,000,000 of bonds secured by a mortgage on the road, this is a fraudulent sale of the stock and bonds and they are absolutely void. *Union Trust Co. v. N. Y., &c., Ry. Co.*, 17 Bull. (O.), 176.

A promoter's contract will bind a company which takes the benefit of it. *L. R. & Ft. S. R. R. Co. v. Perry*, 37 Ark., 164. See *King v. Barnes*, 109 N. Y., 288; 86 id., 389; 81 id., 469; 37 Minn., 90; 3 Myl. & Cr., 773; 10 Hare, 547; 7 Ch. D., 368. See, also, 101 U. S., 392; 93 Ill., 154; 59 Conn., 272; 40 Md., 395; 45 N. H., 370; 37 Ark., 164; 21 Neb., 621.

Railroad directors cannot deal with corporate property for their individual interests. *L. J. & Ft. S. Ry. Co., v. Page*, 35 Ark., 304; *Munson v. S. G. & C. Ry. Co.*, 103 N. Y., 58; *Davoue v. Fanning*, 2 Johns. Ch., 252; *Aberdeen Ry. Co. v. Blakie*, 2 Eq., 1281; see 109 U. S., 522; 91 id., 585; 84 N. Y., 193; 62 id., 240; 80 id., 527; 125 N. Y., 278.

§ 6. LANDS TAKEN FOR PUBLIC USE; DAMAGES THEREFOR; POWERS OF COMMISSIONERS, ETC.

The taking of lands, under legislative grants, for railroads, is a taking for public use, and compensation must be given. *Bradley v. N. Y. & N. H. R. R. Co.*, 21 Conn., 305; 17 id., 59; 1 Kelly (Ga.), 530; 5 Kan., 177; 13 Minn., 315; 5 Nev., 283; *Rice (S. C.)*, 383.

An owner or occupier of lands "injuriously affected" during execution of work authorized by special act, is entitled to compensation, if the injury is sufficient to lessen the value of the property. *Ford v. M. & M. D. Ry. Co.'s*, 17 Q. B. D., 12.

A railroad company having an absolute right of way by charter is liable only to pay for land taken, not for trespass. *L. I. & Ft. S. Ry. Co. v. Dyer*, 35 Ark., 360; 31 id., 499; 32 id., 17, 758.

An elevated railroad lawfully erected and operated by a company on its own land, on the line of a public street, is *damnum absque injuria*, for which no damages can be recovered at common law or under the state constitution. *Penn. Ry. v. Lippincott*, 116 Pa. St., 472; S. C., 9 Atl., 871.

The legislature may delegate the power of eminent domain to private corporations engaged in public enterprises. A valid determination of a tribunal, procured in lieu of the consents of property owners, is conclusive upon all parties and may not be questioned collaterally. *Re Union El. Ry.*, 112 N. Y., 61; aff'g 17 St. R., 630.

The measure of damages for land taken for public use is the difference between the land without the road, and the remaining portion after it is built. *L. R. M. & C. Ry. Co. v. Allen*, 41 Ark., 43; 39 id., 167; 70 Ill., 347; 52 Ind.,

229; 43 id., 328. See 113 Ind., 308; 12 id., 386; 49 id., 664; 25 Vt., 69; 28 id., 103; 34 Tex., 225; 27 N. E. (Ill.), 601.

In ascertaining damages for lands taken for public uses, the inquiry should be as to their value in the market. Reference should also be had to the uses for which the lands are suitable. *L. R. & Ft. S. Ry. Co. v. McGehee*, 41 Ark., 202; 20 id., 561. See 46 Ia., 366, 376; 10 Kan., 439; 1 Bush. (Ky.), 326.

All injuries which are applicable to the owner of the land may be considered in estimating damages. *St. Louis, etc., R. R. Co. v. Mollett*, 59 Ill., 235; 64 id., 338.

An abutter on a street is seized in fee to the center, subject to public use, and can maintain ejectment against a railroad on non-payment of damages. *T. H. & S. E. R. Co. v. Rodel*, 89 Ind., 128.

A company is not bound to take and pay for all the lands described in its petition, if less are needed. *Peoria & R. I. R. W. Co. v. Bryant*, 57 Ill., 473. But land taken must be paid for without regard to the benefits accruing to the owner by the construction and operation of the road. 59 Ill., 273.

A company can only take by condemnation such lands as are necessary. *Curtis v. Ry. Co.*, 20 Minn., 28; 2 Mo. Ap., 105.

In proceedings to condemn land, the statute must be strictly observed. *C. & A. R. R. Co. v. Smith*, 78 Ill., 96; 15 id., 123.

The conveyance to a railroad of a right of way conveys only an easement. *Brown v. Young*, 69 Ia., 625.

One may recover damages with interest thereon from the time of the taking of lands to the time of the assessment. *Whitman v. B. & M. Ry.*, 7 Allen (Mass.), 313; 105 Mass., 303; 125 id., 1; 127 id., 571.

Damages may be recovered for injury to property by a railroad, though it does not cross the property. *Parker v. B. & M. Ry.*, 3 Cush. (Mass.), 107. See 3 Metc. (Mass.), 380; 5 Gray (Mass.), 35.

Damages for injuries to a mill pond by erecting a railroad across it are recoverable. *White v. S. S. Ry.*, 6 Cush., 412. See 103 Mass., 10.

A railroad may recover damages for the construction of another railroad across its track. *Ry. & D. Co. v. Com.*, 14 Gray (Mass.), 553.

Where a railroad crosses a street leading to real estate, not abutting on the railroad, which is thereby depreciated in value, damages are not recoverable. *L. & C. v. N. & S. Ry.*, 10 Cush. (Mass.), 385. But where a railroad runs through a farm, and thereby renders it more inconvenient and expensive to cultivate the remaining part, this is an element of damage to be considered. *Tucker v. M. C. Ry.*, 118 Mass., 547.

The enhancement in value of the owners adjoining lands may be set-off against the amount allowed for damage thereto arising from compulsory sale, but may not be allowed against compensation for the land actually taken. *Harding v. Board of L. & W.*, 11 App. Cas., 208. See *Trustees v. Cal. Ry. Co.*, 8 R. (Scotl.), 405; *Isdem v. Eosdem*, 9 R. (H. L.), 19; *L. R.*, 7 App. Cas., 259 (Scotl.) *Right of Way*; *McLaren v. Ry. Co.*, 5 R., 1042 (Scotl.). Injunction was granted to restrain company from running trains, and from continuing in possession until purchase money paid. *Allgood v. M. & D. Ry. Co.*, *L. R.*, 33 Ch. D., 571.

Deductions for benefits to lands may be deducted from damages caused by construction of a railroad. *Nicholson v. N. Y. & N. H. R. R. Co.*, 22 Conn., 74.

Consequential injuries caused by a street railroad, are *damnum absque injuria*, for which an action will not lie. *Carson v. C. R. R. Co.*, 35 Cal., 325. See 51 Me., 318.

It is sufficient if the map filed by a railroad company, shows the alignment and profile; all connections, switches, or turnouts need not be shown. *Peo. v. B. F. & C. I. Ry.*, 89 N. Y., 75. When a company has filed a map and profile, it has acquired an exclusive right to the line adopted, subject to the right of other roads to cross its route or land according to law. *Roch., etc., Ry. Co. v. N. Y., L. E. & W. Ry.*, 110 N. Y., 128; 16 St. Rep., 838. See as to changing route. *Re N. Y., L. E., etc., Ry.*, 88 N. Y., 279.

Commissioners should approve the proposed route, or make proper alterations. *Peo. v. Tubbs*, 49 N. Y., 356.

Commissioners to determine the manner in which one railroad shall cross another, may determine all questions respecting the same, and such as relate to public safety. *Re Lockport & B. Ry.*, 19 Hun, 38; 44 id., 215; 77 N. Y., 557; 79 id., 64. See, also, as to powers and duties of commissioners. 102 N. Y., 343; 36 Kan., 272; 34 id., 414.

Public lands under water may be taken by a railroad company, and owners of adjoining upland need not be notified. *Re N. Y., W. S. & B. Ry.*, 29 Hun, 269; 103 N. Y., 251.

Where the public acquire a mere right to use lands for a particular purpose, the title of the owner is not extinguished, but his right of enjoyment is subject to the easement. In such case, the right of the public is limited to the particular purposes for which the lands were acquired; and it is only when the entire fee is acquired, that the lands can be appropriated to other uses. *Story v. N. Y. El. Ry.*, 90 N. Y., 122.

The state, or a corporation with the delegated power, may acquire any right or estate in lands, as in the judgment of the legislature the public interests may need. *Id.*

Railroads may take lands already taken for a similar purpose by other railroads, if they do not impair the usefulness of the latter. *N. Y., H. & N. R. R. Co. v. B. H. & E. R. R. Co.*, 36 Conn., 199, 200.

A railroad company has power to take lands outside those included in its plans, if reasonably necessary for the construction of the railway. *Finck v. London & S. W. Ry. Co.*, 44 Ch. D., 330.

Additional burdens cannot be imposed upon a street without additional compensation to adjacent owners. *S. P. R. R. Co. v. Reed*, 41 Cal., 256. A grant by a city of right to lay its track in a public street does not preclude adjacent owners from recovering damages. *Carson v. C. R. R. Co.*, 35 Cal., 325. See 45 id., 275; 39 St. Rep., 378.

Benefits which accrue to land adjoining that taken for railroad purposes may be deducted from damages occasioned. *Meacham v. Fitchburg Ry.*, 4 Cush. (Mass.), 291; 11 id., 506; 3 Allen (Mass.), 133; 7 id., 313. See also 52 Pa. St., 87; 8 Phila., 485.

Where a railway while constructing its road took insufficient precautions to protect an adjoining house, the court enjoined the negligent exercise of powers and appointed a surveyor to report what was necessary to secure the premises. On compliance by the company with the surveyor's requisitions, the court granted an inquiry as to damages. *Biscoe v. G. E. Ry. Co.*, 16 L. R. Eq., 636.

§ 7. NEGLIGENCE BY RAILWAY COMPANIES; CONTRIBUTORY NEGLIGENCE.

The machinery of a railroad must be good and safe, and constructed of proper materials; the servants should be competent and skillful, and exercise care and vigilance in examination and repair. Ill. Cen. R. R. Co. v. Phillips, 49 Ill., 234. And see 43 id., 339, 58 id., 389; 63 id., 95; 67 id., 68; 56 Md., 511; 5 id., 339; 29 Ia., 14; 44 id., 134; 29 Kan., 149; 12 Md., 267; 9 Nev., 271.

Companies must inspect machinery. It must exercise reasonable care to provide safe machinery and cannot escape liability for defects which reasonable and ordinary diligence would have discovered. Muldowney v. Ill. C. R. Co., 36 Ia., 462.

An attempt by one person to save another from impending danger is not negligence *per se*, and whether one attempting so to do is guilty of such contributory negligence as to bar an action for injuries, is a question for the jury. Penn. Co. v. Lagendorf, 28 N. E. (O.), 172. See 115 N. Y., 22; 105 id., 164.

A master may be liable for injuries to a servant caused by defective machinery, if such defects could have been discovered on the application of known tests. See Ballard v. Hitchcock Mfg. Co., 51 Hun, 188, and cases cited. 76 N. Y., 125; 26 id., 102; 39 id., 468; 11 N. W., 559.

In order to render a railroad liable it must be shown that they have been negligent or been remiss in some duty, care, prudence or diligence due to passengers; they are not insurers of the latter. Palmer v. Penn. Ry., 111 N. Y., 488.

Negligence of a conductor in care of passengers is negligence of company. C. C. & T. C. R. Co. v. Powell, 40 Ind., 37.

Exemplary damages may be allowed and one injured by a train caused by those in charge of it. Murphy v. N. Y. & N. H. R. R. Co., 29 Conn., 499; 18 Kan., 523; 27 Md., 287.

Running an engine without a headlight on a dark night is gross negligence. Burling v. I. C. R. R. Co., 85 Ill., 18. See 28 St. R., 87; 42 Hun, 306.

Servants of railroads are presumed to contract with reference to the hazards of their employment. 75 Ill., 106; 77 id., 365; 92 id., 43.

Employees continuing in extra hazardous employment assume the risk. 14 Or., 211.

A person, put in imminent jeopardy by the gross negligence of a railroad company, who is seriously injured in attempting to escape, though he misjudged as to the danger, may recover damages unless he acted upon a rash misapprehension of the situation. M. & W. R. R. Co. v. Winn, 26 Ga., 250. See 32 St. R., 612; 99 N. Y., 158; 6 St. R., 250; 3 id., 738; 98 N. Y., 128.

Where a passenger stepped into a hole, caused by defective construction of carriage, the company was held liable. Stewart v. Cal. Ry. Co., 42 J., 38. See 8 M. 486; 42 J., 228 (Scotl.). See, also, 45 J., 413; 120 N. Y., 467; 118 id., 314.

Though an elevated railroad is not bound, for the protection of travelers below, to provide the best known safeguards, it is bound to use due diligence and care to guard against accidents to those passing below, although such precautions were not originally contemplated. Mason v. Man. Ry., 8 St. R., 118.

A railroad is not liable for negligence of a receiver who is operating the road. M. & S. Ry. Co. v. Stringfellow, 44 Ark., 322; 53 Ind., 57; 23 id.,

553. See 24 Kan., 619; 26 id., 754; 40 Fed. R., 631; see as to liability of lessor and lessee, 24 N. E. (Ill.), 559; 11 Pac. (Or.), 68; 125 N. Y., 118.

Where a passenger on a platform, standing at a reasonable distance from the track, was struck by the brakes of a passing train, held, that he was rightfully on the platform, and had a right to presume himself safe, and entitled to damages. *Sullivan v. Vicksburg Ry.*, 39 La. Ann., 800; 2 South., 586. See 124 N. Y., 414; id., 493; 19 W. Dig., 10, 76; 97 N. Y., 494.

Injury to a passenger carried on a train, without fault on his part, raises a presumption of negligence which the company must disprove. *George v. St. L. & C. Ry. Co.*, 34 Ark., 613.

A railroad company is bound to use the utmost diligence which human skill and foresight can effect. Id., 16 Ill., 198; 17 id., 131; 68 id., 560; 25 Md., 388; 45 id., 353; 21 id., 284; 36 Mo., 351.

If a railroad is bound to use reasonable care in furnishing its employees with suitable cars, this rule does not apply to a car received from another railroad in transit. The only duty it owes to employees in such a case is to provide competent inspectors. *Mackin v. B. & A. Ry.*, 135 Mass., 201. See 116 N. Y., 398; 100 id., 462.

Negligence cannot be inferred from speed alone. *Warner v. N. Y. C. Ry.*, 44 N. Y., 465. The company is not liable for an error of judgment of the engineer as to speed. *Crystal v. T. & B. Ry.*, 105 N. Y., 170.

It is negligence for one knowing of the frequent passage of trains to approach the tracks at such speed as to be unable to check his horse before crossing. *Wilds v. H. R. Ry. Co.*, 24 N. Y., 430. A person must use his ordinary faculties to discover danger. *Gonzales v. N. Y. C. Ry.*, 38 N. Y., 440. He must look both ways, when looking will do any good. *Thompson v. N. Y. C. Ry.*, 110 N. Y., 636; 36 How. Pr., 84; 11 Daly, 122; 88 N. Y., 346; 35 id., 75; 125 id., 526; 124 id., 308; 113 id., 355, 667. He must be alert and vigilant in the use of his eyes and ears. *Heaney v. L. I. Ry. Co.*, 112 N. Y., 122; 98 N. Y., 198; 120 id., 293. A jury has no right to *guess* that one was free from fault; plaintiff must show that by a preponderance of proof. The law demands proofs and not mere surmises. *Bond v. Smith*, 113 N. Y., 385. Where negligence is the issue it must be an unmixed case. *Donnelly v. Brooklyn C. Ry. Co.*, 109 N. Y., 22; 27 Barb., 227.

The doing of an act, which an unforeseen emergency renders desirable, does not render the company liable for a failure to do that act. *Draper v. D. & H. C. Co.*, 22 W. Dig., 542.

As to whether the question of contributory negligence is one of law. See 125 N. Y., 715, 737, 760, 774.

A railroad company owes to its employees the duty of furnishing "proper and reasonably safe appliances and machinery, and skilled and careful co-employees, but also to make and promulgate rules which if faithfully observed will give reasonable protection to employees." *Abel v. D. & H. C. Co.*, 103 N. Y., 581. See *Whittaker v. Same*, 126 id., 544; *Palmer v. Same*, 120 id., 170, and cases cited; 29 N. Y. St. Rep., 149.

Passengers must have ample time to alight from trains. *McDonald v. L. I. Ry. Co.*, 116 N. Y., 546. See 118 id., 533; 32 N. Y. St. Rep., 381; 113 N. Y., 364; 28 N. Y. St. Rep., 498, and cases cited; 15 N. Y. St. Rep., 11; 53 Hun, 372; 50 id., 22; 97 N. Y., 259; 5 N. Y. St. Rep., 700; 35 Hun, 590; 98 N. Y., 128. See 37 Hun, 107; 20 W. Dig., 313. **As to unattended engine**, see *Mars v. D. & H. C. Co.*, 54 Hun, 625, and cases cited. **Car alone on track**,

Webster v. R. W., etc., Ry., 115 N. Y., 112; 23 St. Rep., 778. See 118 N. Y., 527; 28 N. Y. St. Rep., 94, 498. **Standing on platform**, 98 N. Y., 650. **Injury to child**, 2 How. Pr. (N. S.), 30; 19 W. Dig., 436; 91 N. Y., 420; 90 id., 670. **Investigation of accidents by railroad commissioner**, N. Y. Daily Reg., Nov. 20, 1884. See as to other powers and duties of railroad commissioners, *Peo. v. N. Y., L. E., etc., Ry. Co.*, 104 N. Y., 58; 106 id., 265; 8 St. Rep., 678.

To free a master from liability for injuries to a servant, the injuries must result solely through the negligence of the employees. *Stringham v. Stewart*, 100 N. Y., 526; 53 id., 549; 73 id., 38; 80 id., 46; 81 id., 209; 95 id., 546.

See as to liability for negligence by overcrowding cars. *Lehr v. S. & H. P. Ry.*, 118 N. Y., 556; 55 id., 108; see 29 N. Y. St. Rep., 144. **Riding on platform**, 36 N. Y., 135; 42 How. Pr., 289; 32 Barb., 657.

Operation of safety gates. *Feeney v. L. I. Ry. Co.*, 116 N. Y., 375; see 6 N. Y. St. Rep., 621. **Car in motion.** *Solomon v. Man. Ry.*, 103 N. Y., 437, 670.

See as to test of contributory negligence. *Lent v. N. Y. C. Ry.*, 31 St. Rep., 538; 27 id., 549; 3 id., 636; 7 L. R. A., 111. See 101 N. Y., 419; 104 id., 652; 50; Supr. Ct. (J. & S.), 114; 88 N. Y., 13, 42, and cases cited.

Backing train. *Barry v. N. Y. C. Ry. Co.*, 92 N. Y., 289; 19 Abb. N. C., 18; 15 W. Dig., 24. **Overworked employee**, 20 W. Dig., 531. **Insufficient number of trainmen.** *Flike v. B. & A. Ry. Co.*, 53 N. Y., 549. See as to injury on connecting roads, 29 Hun., 637; 19 N. Y., 341; 38 id., 260; 20 id., 492; 8 id., 37; 29 Barb., 35; 45 N. Y., 184; 12 Abb. Pr. N. S., 473; 40 N. Y., 168; 16 Barb., 315; 10 Abb. Pr., N. S., 473; 40 N. Y., 168; 16 Barb., 315; 10 Abb. Pr., 398.

Where an employee was injured by the collision of trains due to a mistake of a telegraph operator, it was held that he could not recover damages, because the accident was caused by a fellow servant. *Slater v. Jewett*, 85 N. Y., 61. But where the superintendent dispatched one train on the time of another and an accident occurred, held that the company was liable for injuries to employees; the superintendent stood in the position of the master. *Sheehan v. N. Y. C. Ry.*, 91 N. Y., 332; 92 id., 639. See *Sutherland v. T. & B. Ry.*, 28 N. Y. St. Rep., 201; 59 N. Y., 517; 99 id., 368.

While a railroad employee assumes the ordinary risks of his employment, such assent is not available to the corporation unless they have taken reasonable precautions to ensure his safety. *Dana v. N. Y. C. Ry.*, 92 N. Y., 639; 85 id., 61.

Street railroads have a paramount but not exclusive right to the use of their tracks, and where persons respect this right, and without fault on their part, they are injured by the negligence of the company, they may recover damages. *Fleckenstein v. Dry Dock, etc., Ry.*, 8 St. Rep., 32. See 32 Barb., 358; 3 Bosw., 314; 22 How. Pr., 248.

See as to keeping tracks free from snow. *Silberstein v. H. W. S. & C. Ry.*, 27 St. Rep., 330.

A fireman was killed by the breaking of a king-bolt which connected an engine and tender. This bolt had been recently inspected and no flaw was apparent. Held, that the evidence did not warrant a submission of the case to the jury. *Powers v. N. Y. C. Ry.*, 38 St. Rep., 558. See id., 473; 39 id., 367; *Germain v. Montreal & N. Y. Ry. Co.*, 6 L. C. L., 172 (Quebec); 32 N. Y. St. Rep., 416.

A master's liability for injuries to his servant is based upon personal negligence of the employer, and the evidence must establish such fact. The presumption is that the master has performed his duty until the contrary appears. *Cahill v. Hilton*, 11 St. Rep., 26.

The submission to the jury of question of negligence is not justified where plaintiff's evidence is just as consistent with, as with the absence of negligence. *Hayes v. Ry. Co.*, 97 N. Y., 259; 59 id., 356.

Where a brakeman was killed by reason of improperly constructed bumpers of cars, the negligence of the engineer in running the engine faster than usual, will not exonerate the company. *Donahue v. Brooklyn Ry.*, 38 St. Rep., 485.

Proof that passenger is injured by railroad is prima facie evidence of negligence which the company must rebut. *Zemp v. Ry. Co.*, 9 Rich. (S. C.), 84.

Railroad companies are liable to persons not passengers, if latter free from negligence. 22 Ind., 26; 40 O. S. (O.), 637.

A corporation owning a parlor car in use upon a railroad, under agreement between the corporation and railroad, is not liable for injuries to a person, not a passenger, by the porter throwing a bundle from the car. *Walton v. N. Y. C. S. L. Co.*, 139 Mass., 556. See *Dwinelle v. N. Y. C. Ry.*, 30 St. Rep., 578. See as to theft of property from sleeping car, 143 Mass., 267; but see 34 St. Rep., 854; 35 id., 60.

Street car companies must exercise such care and precaution to avoid accidents as reasonable prudence would suggest. *Shea v. P. & B. R. R. Co.*, 44 Cal., 414.

The statute does not exonerate one from the necessity of exercising reasonable care and prudence. *Murphy v. Ch. & R. Co.*, 45 Ia., 661; 20 id., 562.

§ 8. RAILROAD CROSSINGS; ACCIDENTS AT; SIGNALS.

While all the statutory signals may be given, a company may yet be negligent in running its train at an improper and dangerous rate of speed at a street crossing in a populous locality; that is a question for the jury. *Thompson v. N. Y. C. Ry.*, 16 St. Rep., 869. See 4 So. (Ala.), 142.

Where the view of the tracks is obstructed, and one approaching them looked and listened for trains, his failure to stop his team and look and listen is not *per se* contributory negligence. *Reed v. Chicago, etc., Ry.*, 37 N. W. (Ia.), 149. And when the view is obstructed, it cannot, as a matter of law, be said that the negligence of the deceased contributed to the accident, when it is doubtful if he could have seen an approaching train. *Leonard v. Railroad Co.*, 42 N. Y. Supr. Ct., 225.

Person crossing tracks must use utmost diligence in watching; he must look in both directions. *T. W. & W. Co. v. Shuckman*, 50 Ind., 42; 34 Ia., 153; 60 Mich., 124.

Railroads must use reasonable care and diligence in running engines over crossings; the question of negligence is for the jury. *Macon & W. R. R. Co. v. Davis*, 18 Ga., 679. See 19 id., 437, 440; 17 Ill., 541.

Where omission to ring the bell or sound the whistle will not, *per se*, render the company liable. *St. Louis, etc., R. R. Co. v. Manly*, 58 Ill., 300; 36 id., 117, 122, 220. See 70 id., 103; 81 id., 450; 33 Ind., 335. A bell need not be rung at farm crossings. 62 Ill., 233.

The provision requiring a bell to be rung or whistle sounded at 80 rods from a crossing (L. 1853, c. 282, § 7), was repealed by L. 1886, c. 593, p. 838, and no such duty is now imposed upon a railroad. The omission to ring a bell or sound a whistle, when not required by statute, is not negligence *per se*, and whether the defendant approached the crossing with proper care, should have been submitted to the jury. *Austin v. S. I. R. T. Ry.*, 39 St. Rep., 76. See *Lewis v. N. Y., L. E. & W. Ry.*, 34 St. Rep., 373.

The giving of statutory signals does not, under all circumstances, render a company free from negligence, if it ran its train at a high or dangerous rate of speed through a more or less densely populated village. *Thompson v. N. Y. C. Ry.*, 16 St. Rep., 869.

Because there is no law requiring a railroad company to blow a whistle on approaching a crossing, that fact will not relieve the company from giving proper signals. *Guggenheim v. L. S. Ry.*, 33 N.W. (Mich.), 161.

Where the view of the track was obscured by smoke, the question as to the giving of signals in dispute, and no statutory regulation was violated, held, that plaintiff was guilty of contributory negligence in attempting to cross before the smoke cleared away, and the submission to the jury was error. *Heaney v. L. I. Ry.*, 9 St. Rep., 707.

While a traveller approaching a railroad crossing is bound to look and listen before proceeding, it is only where he might have seen, had he looked, or heard, had he listened, that a jury is justified in finding that he did not look or listen. *Smedis v. Brooklyn, etc., Ry.*, 88 N. Y., 13; *Cranston v. N. Y. C. Ry.*, 39 Hun, 308. See, further, as to obstructed view of tracks, 44 N.W. (Ia.), 686; 54 N. Y. Supr. Ct., 262; 26 Neb., 630.

Where the whistle of an engine approaching a crossing was not blown and the gateman gave no signal, and the view was considerably obstructed, yet because plaintiff, travelling on foot, failed to look both ways, it was held, that the accident was due to his omission to use due care and prudence, and that a nonsuit was properly granted. *Davey v. London & S.W. Ry. Co.*, 11 Q. B. D., 213; 12 id., 70.

Where plaintiff drove a team upon a railroad on a trot without looking or listening for trains, although he knew when they were due, and the view of the track was unobstructed, held, that he was guilty of contributory negligence. Where the question as to signals is a disputed one, it is for the jury. *Nash v. N. Y. C. Ry.*, 34 St. Rep., 788. A decision irreconcilable with *Nash v. N. Y. C. Ry.* (supra) is *Cranston v. Same*, 35 St. Rep., 994, decided on the day following the *Nash* case. In that case the evidence clearly showed, and it was conceded by plaintiff's counsel upon the argument, that plaintiff drove a sleigh down an inclined plane on a trot, across the tracks without looking or listening, and that the statutory signals were given, yet a judgment for plaintiff was affirmed by a unanimous court.

Open gates with gateman in charge is notice of a clear track, and in absence of other circumstances, it is not negligence to pass upon the track without stopping to look or listen. *Ry. Co. v. Schneider*, 45 O. S. (O.), 678; *Palmer v. N. Y. C.*, 20 St. Rep., 904. See, as to flagman, 40 N. Y., 9, 40; 10 St. Rep., 433; 11 id., 837; 17 N. E. (O.), 321.

As a duty of travellers to look out for trains, see 56 Ala., 484; 6 So., 37; 18 Atl., 619; 129 Ill., 132. As to duty of company towards trespassers, see 15 St. Rep., 884.

A company which has for some time given signals at a private crossing, and erected sign posts thereat, is negligent *per se* if it fails to give signals there, and an accident occurs thereby. *Nash v. N. Y. C. Ry.*, 22 St. Rep., 106; rev'd on other points, 34 St. Rep., 788. See 41 Fed. R., 187; 24 N. E. (Mass.), 38; 11 S. E. (N. C.), 412; 104 N. Y., 362, and cases cited; 39 N. Y., 61.

An open gate at a railroad crossing is an assurance of safety, and invitation to cross. *Gushing v. Sharp*, 96 N. Y., 676; 10 St. R., 433. See 38 Fed. R., 15; 20 St. Rep., 904; 35 id., 9; 29 id., 390; 40 Barb., 550.

See further as to signals, 26 N. E., 207; 6 Mackey (D. C.), 232; 11 Pac. (Kan.), 134; 35 Kan., 350; 130 Ill., 146; 76 Tex., 244; 13 S. W. (Mo.), 1053; 46 N. W. (Wis.), 165; 23 Ill. App., 496; 28 id., 102; aff'd, 21 N. E., 846; 129 Ill., 335; 14 Daly, 219; 19 Abb. N. C., 18; 120 Ind., 289; 26 N. E., 357; 39 St. Rep., 76.

Where there has been such a public user of a road for twenty years as would justify a record of it as a public highway, and it has been repaired or taken charge of by public authorities, the fact they failed to perform their duty to have it recorded, does not change the mandate of the court that it shall be deemed a public highway. So held in regard to requirement that signals should be given by railroads at crossings. *Lewis v. N. Y., L. E. & W. Ry.*, 34 St. Rep., 373. See, also, 31 St. Rep., 414; 92 N. Y., 289; 104 id., 362; 33 St. Rep., 1029.

See as to erection of farm crossing, *Wheeler v. R. & S. Ry. Co.*, 12 Barb., 227.

§ 9. DAMAGE BY FIRES CAUSED BY RAILROADS.

Railroad companies are not liable for damages by fire or sparks from an engine, provided it has taken every precaution, and adopted the best scientific apparatus to prevent injury by fire, and is not negligent in the management of its engines. *Vaughn v. T. V. Ry. Co.*, 5 H. & A., 679; 29 L. J. Ex., 247. See further cases of fires occasioned by locomotives, 31 L. J. C. P., 12; 3 F. & F., 736; 1 id., 23; 8 Barr, 366; 8 Barb., 427; 18 id., 80.

The compensation in case of such fires, should be measured, as in the case of an unwilling vendor. *Gibson v. S. E. Ry. Co.*, 1 F. & F., 23. If the company is negligent it is responsible to the owner for the injury to the property, although they could not have reasonably anticipated that such injury would be caused by it. *Smith v. L. & S. W. Ry. Co.*, 6 L. R. C. P., 14.

For damages caused by fire, communicated from a locomotive to wood, from thence to the freight and station house, and thence to a dwelling, a railroad is liable. *Safford v. B. & M. Ry.*, 103 Mass., 582. See 27 St. R., 76, and cases cited.

Greater caution is required to prevent escape of fire when wooden buildings stand near the track. *Fero v. Buf. & S. L. R. R. Co.*, 22 N. Y., 209. See 35 N. Y., 210; 49 id., 420.

When fire is communicated to grass or rubbish suffered to accumulate by the track, and it spread thence to and destroyed forest trees, the question of negligence is for the jury. *Webb v. R. W., etc., R. R. Co.*, 49 N. Y., 420; 26 St. Rep., 268; 115 N. Y., 579; 73 Tex., 117; 62 Ill., 346; 64 id., 28; 86 id., 443; 51 Ind., 150; 11 Kan., 47; 12 id., 354; 20 Mich., 244. See, also, 45 Mo., 322; 46 id., 456; 4 Neb., 268; 45 N. W. (Dak.), 204; 34 St. Rep., 382; 67 Tex., 685; 40 L. I. P.

P., 21; *Contra* Ryan v. N. Y. C. Ry., 35 N. Y., 210; 62 Penn. St., 353. But see 115 N. Y., 579; 22 Abb. N. C., 377.

Railroads should adopt proper precautions to prevent danger by escape of fire from locomotives. Negligence should be implied from escape of fire, and the *onus* is on the company to rebut the presumption. Bass v. C. B. & Q. R. R. Co., 28 Ill., 18; 53 id., 447. See 71 Ill., 493; 84 id., 429; 31 Ia., 176. See 21 Md., 275; 10 R. I., 22.

Escape of sparks in such quantities as to endanger abutting premises raises an inference that locomotives are improperly constructed or managed. O'Neil v. N. Y. & O. M. Ry. Co., 115 N. Y., 579.

A railroad company is only liable for the actual damages occasioned by the construction of its road. Barclay R., etc., Co., v. Ingham, 86 Pa. St., 194.

When damage to property is caused by fire from an engine raises an inference of negligence in its construction or maintenance. L. & N. Ry. v. Reese, 85 Ala., 497; 5 So., 283. See 10 Atl. (Pa.) 417; 35 Minn., 170.

Where a hot coal and fire in the grass along the track were found soon after the passage of an engine; and it was proved that defendant's engines emitted considerable quantities of sparks when passing that locality, held, that question of negligence was for the jury. Shepp. v. N. Y. Ry., 4 N. Y. S., 951.

Omission of owner of hay stacks to plow around to protect them from running fires, is not negligence *per se*. Hoffman v. Chicago, etc., Ry., 40 Minn., 60; S. C., 41 N. W., 301. Nor is an owner of hay stacks required to keep the grass burned off where the hay is, or between it and the road. Louisville, etc., Ry. v. Hart, 119 Ind., 273; S. C., 21 N. E., 753.

§ 10. DAMAGES BY DIVERSION OF WATER COURSES.

Damages are recoverable for diversion of a water course. McCord v. High, 24 Ia., 336. See 35 id., 558; 62 id., 11; 56 id., 470; see 49 id., 378; 6 Bush. (Ky.), 142; 28 Wis., 171; Whalley v. L. & Y. Ry. Co., 13 Q. B. D., 131. When diversion of stream by railroads, see Pugh v. G. V. Ry. Co., 15 Ch. D., 330; 49 L. J. Ch., 721.

The grant to a railroad of a right of way across lands is not a license to overflow the same by unskillful construction. St. L. etc., Ry. Co. v. Morris, 35 Ark., 622. See 39 id., 463; 44 id., 360. But railroads having a right of way and exercising due care and skill, are not liable for unavoidable injuries caused by the road. *Id.* See 5 Dak., 1; 47 Ark., 340; 1 S. W., 873; 38 Mo. App., 130; 123 Ill., 440; 15 N. E., 279; 15 S. W., 484.

See as to diversion of water, 28 Pa. St., 206; 36 id., 194; 56 id., 445.

For throwing water upon lands and preventing access to premises, damages are recoverable. I. B. & W. R. Co. v. Smith, 52 Ind., 428; 49 Ia., 358. See 31 Me., 215; 11 Or., 136; 25 Vt., 63, 49, 465; 37 id., 99.

Cutting fire hose. Mott v. H. R. Ry. Co., 1 Robt., 585.

§ 11. OBLIGATIONS OF RAILWAYS TO RESTORE STREETS.

As to stopping up a public street by a railway, see Atty.-Gen. v. Gt. East. Ry. Co., 6 L. R., H. L., 367.

Where a roadway is carried over a railroad, the latter is bound to keep in repair the roadway upon the bridge. Bury v. L. & Y. Ry. Co., 20 Q. B. D., 485, *aff'd* by H. L. W. N., 156. Also, all the approaches to the bridge. North., etc., Ry. Co. v. Langborough, 24 L. T., 544; 9 L. R. Q. B., 409.

Railroad corporations must restore streets, highways, etc., to their former condition. *Peo. v. N. Y., N. H. & H. Ry.*, 89 N. Y., 266; 58 id., 152; 84 id., 247; 80 id., 216; 74 id., 302; 45 id., 846; 27 Hun, 549; 29 id., 560; 28 id., 472. See 121 N. Y., 572; 123 id., 589; 50 Hun, 64, and cases cited.

Obligation to restore public street. See *Glasgow, etc., v. Magistrates*, 11 R., 1110; 11 R. (J. C.), 59; 12 R., 1315. Company enjoined from proceeding with work; damages therefor. *Glasgow, etc., v. Glasgow, etc.*, 12 R., 1287; 27 L. J., M. C., 147; 26 N. E., 7; 50 N. Y., 203.

As to percolation of water; fall of embankment; and nuisances during constructions occasioned by railways, see *Hardman N. E. Ry. Co.*, 47 L. J. C. P., 386; 20 L. R. Eq., 544.

A street railway is liable for a change of grade, although its occupation of the street be lawful. *Quinn v. Ry. Co.*, 26 Barb., 35.

Where a street railroad company, on receiving its franchise, agreed to keep the streets for a certain distance "in good repair and condition," it was held, that they were not liable for the repaving of the whole street; that their obligations extended only to repairs. *Chicago v. Sheldon*, 9 Wall., 50. See 3 Lans., 270.

See as to tunnelling under streets. Rights of proprietors to compensation. *Glasgow, etc., v. Glasgow, etc., Ry. Co.*, 10 R., 1287 (Scotl.). Interruption of access. *Don v. North B. Ry. Co.*, 5 R., 972; 8 R., 442; 10 R. (H. L.), 30; L. R., 8 App. Cas., 265; 7 R., 179; 9 R. (H. L.), 19; L. R., 7 App. Cas., 259.

§ 12. ERECTION AND MAINTENANCE OF FENCES.

Where a railroad company is not bound to erect barriers at road crossings, they are not liable for injuries to cattle straying thereon; but owners of cattle are liable to the company for injuries to cars by collision with such cattle. *Rocheleau v. St. L. & Atl. Ry. Co.*, 2 L. C. R., 337 (Quebec). But see *Charman v. South East. Ry. Co.*, 21 Q. B. D., 524 (Eng.); 5 R. (H. L.), 211; L. R., 3 App. Cas., 1082 (Scotl.); 1 Pug., 109 (New Brunsw.).

A company is not bound to erect screens to prevent horses from being frightened by the sight of locomotives. *Simkin v. London & N. W. Ry. Co.*, 21 Q. B. D., 453. See 8 Barb., 427.

If trespassers leave gates open and stock are killed, the owner is not guilty of contributory negligence. *T. W. & W. Co. v. Milligan*, 52 Ind., 505. See 67 N. Y., 153.

A railroad is liable for injury to a horse which escaped through a defect in its fence, without proof of any care on the part of the owner. *Rogers v. Ry.*, 1 Allen (Mass.), 16. But see 49 Pa. St., 101.

The killing of stock by a railroad raises a presumption of negligence. *St. L., etc., Ry. Co. v. Hagan*, 42 Ark., 122. See 33 id., 816; 36 id., 87; 5 Dak., 69.

Injury to cattle caused by defective fence will not render a company liable, unless it had direct or constructive knowledge of such defect, or was negligent in not making proper examination to discover defects. *Hodge v. N. Y. C. Ry.*, 27 Hun, 394.

A company which fails to erect and maintain fences along its road is liable for cattle injured and for loss by non-user of pasture lands. *Leggett v. R. W., etc., Ry.*, 41 Hun, 80.

A request by local authorities that a corporation place gates at crossings imposes no duty upon it, nor is it chargeable with negligence for failure

to do so, until an order therefor has been obtained from the supreme court. *Daniels v. S. I. R. T. Co.*, 125 N. Y., 407.

To impose a liability upon railroads for neglect to maintain fences, there must be some action on the part of the corporation, by its mechanical or other agents, to produce the injury; no liability is imposed for injuries to stock which strays upon the railroad. *Knight v. N. Y., L. E. & W. Ry.*, 99 N. Y., 25; 120 id., 579; 41 Hun, 80; 15 id., 333; 67 N. Y., 153; 61 id., 355; 38 id., 433.

The duty of a railroad company to erect fences and crossings will be enforced by the courts. *Jones v. Seligman*, 81 N. Y., 190. See further as to gates and gatemen, 13 S. W. (Mo.), 817, 893; 55 N. Y. Super., 50; 30 Ill. App., 307, 437; aff'd, 22 N. E., 513; 130 Ill., 116; 99 Mo., 394; 74 Mich., 86.

§ 13. RAILWAY TICKETS; RIGHTS AND OBLIGATIONS OF PASSENGERS.

A passenger entering a car at one station, and is properly expelled at a second station for refusal to pay fare, is not entitled to be carried between the second and third stations, on same train, by payment of fare. *Swan v. M. & Q. Ry.*, 132 Mass., 116. See 56 Hun, 268, and cases cited.

A railroad company may require a passenger to purchase a ticket before entering a car, and surrender it, or pay his fare, at the end of his journey; but it cannot require him to produce his ticket or pay his fare before leaving its premises, and detain him there until he does (citing many cases). *Lynch v. Ry. Co.*, 90 N. Y., 77; aff'g 24 Hun, 506; 121 N. Y., 44. But see N. Y. Daily Reg., Feb. 16, 1885; 2 N. Y. S., 410; also, 80 N. Y., 236; 94 id., 278; 20 id., 126; 20 N. H., 250; 53 N. Y., 25; 4 Hun, 217; 23 Barb., 130.

A passenger riding on a free pass, but pays compensation in a drawing room car, is a passenger for hire, notwithstanding stipulations exempting the company from liability for injuries. *Ulrich v. N. C. Ry.*, 13 Daly, 129. A person on a steamboat, intending to travel thereon, is a passenger to whom the company owes the duty of a carrier, though his fare has not been paid. *Cleveland v. N. J. S. Co.*, 7 N. Y. St. Rep., 598; 68 N. Y. 306. See 29 N. Y. St. Rep., 357; 8 N. Y. S., 357; 8 id., 309; 40 Barb., 546; 39 N. Y., 227; 40 id., 168.

One travelling on a free pass can only hold the company liable for gross negligence. *T. W. & W. Ry. Co. v. Beggs*, 85 Ill., 80.

The contract between plaintiff and defendants did not authorize the latter to remove plaintiff from the car on failure to produce ticket or pay fare as provided by the condition. *Butler v. Man, S. & L. Ry.*, 21 Q. B. D., 207.

A passenger is justified in resisting, to the extent of his power, an attempt to remove him from a train in motion. *English v. D. & H. C. Co.*, 66 N. Y., 454. A trespasser may recover for unnecessary injury from those removing him from a train. *Hoffman v. N. Y. C. R. R. Co.*, 44 Super. Ct., 1; 87 N. Y., 25. See 40 Hun, 605.

A man approaching a railroad station with an intention to purchase a ticket and travel upon a train is not a passenger before he reaches the station. *June v. B. & A. Ry.*, 26 N. E. (Mass.), 238.

By the sale of a ticket to a passenger, a corporation obligates itself to carry a reasonable amount of baggage for such passenger and deliver at the end of the journey. *Isaacson v. N. Y. C. Ry.*, 94 N. Y., 278; 50 Barb., 193.

A passenger is bound by a notice on his ticket that the seller acts only as agent for a connecting road. *Wealon v. G. T. Ry.*, 5 N. Y. St. Rep., 256.

See 48 N. Y., 212. See as to ejection of passengers, 37 Hun, 107; 87 N. Y., 25; 23 id., 343; 47 id., 122.

Money, except for payment of expenses, and merchandise is not embraced within the term baggage. *Hutchins & Co. v. W. & A. R. R.*, 25 Ga., 61. See 42 N. Y., 326; 124 id., 53.

§ 14. LIMITATION OF LIABILITIES BY COMMON CARRIERS.

By the rule in the United States courts, a carrier may limit his common law liability as an insurer; but there must be an express contract, not a mere notice. *Ry. Co. v. Mfg. Co.*, 16 Wall., 318. But a common carrier cannot lawfully exempt himself by stipulation for the negligence of himself or servants. *Ry. Co. v. Lockwood*, 17 Wall., 357; 17 Fed. R., 905; 16 N. Y. State Rep., 356; 356; 6 How., 344.

In New York a common carrier may limit common law liability for negligence by servants. A reduced rate of transportation is a sufficient consideration to support a special contract. *Bissell v. N. Y. C. Ry. Co.*, 25 N. Y., 442; 48 id., 511; 52 Hun, 227; 71 N. Y., 180; 80 id., 71; 24 id., 181; 49 id., 263; 124 id., 62; 6 L. R. A. (Va.), 849.

In order to limit liability upon freight, a railroad should insert such limitation in its contract. *Foy v. T. & B. R. R. Co.*, 24 Barb., 382; 125 N. Y., 118; 26 N. Y. State Rep., 587; 7 N. Y. S., 185; 56 N. Y., 168; 89 id., 370; 124 id., 62; 108 id., 434.

Limitations upon liability of a company must be reasonable, and not work a snare or fraud upon the company. *Adams Ex. Co. v. Reagan*, 20 Ind., 21.

A receipt for goods by a railroad, specifying that they are to be carried beyond its terminus, renders it liable for its own default, and that of carriers beyond its terminus. *King v. M. & W. R. R. Co.*, 62 Barb., 160; 45 N. Y., 514, 524; 24 id., 269.

See as to stipulation limiting liability to express messenger, 125 N. Y., 422; 124 id., 59.

See as to stipulation limiting liability for injuries to employee, 125 N. Y., 209; 54 Hun, 143.

A notice on a railroad ticket does not limit liability for baggage, unless the purchaser was aware of such notice. *Rawson v. Pa. R. R. Co.*, 48 N. Y., 212.

As to when delay in delivery of goods, caused by a mob, is excusable, see *Geisner v. L. S. & M. S. Ry.*, 102 N. Y., 563; 76 Tex., 337.

When delay caused by strikes. *Little v. Fargo*, 43 Hun, 223; 12 N. Y., 245.

§ 15. COSTS IN RAILWAY CASES.

One jointly interested with others in a common fund, who, in good faith, maintains the necessary litigation to save it from waste and secure its proper application, is entitled in equity to the reimbursement of his costs as between solicitor and client, either out of the fund itself, or by proportionate contributions from those who receive the benefit of the litigation. And where a person brings such fund into court, he is entitled to be paid therefrom his costs, counsel fees and necessary expense of the litigation; that is to say, his costs as between solicitor and client. A trust estate must bear the necessary expense of its administration. *Trustees v. Greenough*, 105 U. S., 527; *Central Railroad v. Pettus*, 113 id., 116.

A less favorable rule seems to prevail in New York. See *Att'y-Gen. v. N. A. Ins. Co.*, 91 N. Y., 57, 23 Hun, 596; 86 N. Y., 626.

§ 16. MANDAMUS AGAINST RAILWAYS.

Mandamus to compel to register transfer of stock refused where applicant had other remedies. *Reg. v. L. V. Ry. Co.*, 22 Q. B. D., 463; *Ex parte Watson*, 3 Pug., 600 (New Brunsw.). As to appraisal of damages for land taken for a railroad, see *Ex parte Gray*, 4 All., 118 (New Brunsw.).

Mandamus will issue to compel a railroad to keep its road properly equipped and in use. *State v. H. & N. H. R. R. Co.*, 29 Conn., 546. As to abandonment of road, see 41 Conn., 139.

Mandamus is a proper remedy to compel a railroad company, in making their track across a public stream, not to obstruct navigation. *State v. Ry. Co.*, 9 Rich. (S. C.), 247. Same as to control and transfer of stock, 2 S. C., 25.

Mandamus will lie to compel a railroad company succeeding to the rights of another company to restore to its original channel water diverted from its course by the original company. *Lefurgy v. N. Y. C. Ry.*, 3 N. Y. S., 302; 21 St. R., 113.

An injunction will lie to prevent heaping up snow in front of a residence by a street railroad for a longer period than reasonably requisite to remove it. *Prime v. Ry. Co.*, 1 Abb. N. C., 63.

A writ of mandamus has been issued against a railroad company to compel it to restore to its former position a portion of a channel of a stream; to complete its road, to replace its tracks; to run its trains; to grade its road-bed properly; to run its trains to the end of its road; to deliver grain to a particular warehouse or elevator; to build a bridge; to restore an abandoned station; to operate its road as a continuous line. *Wright v. S. B. & N. Y. Ry. Co.*, 49 Hun, 445; *Hall v. Union Pac. Ry. Co.*, 91 U. S., 343; 37 Conn., 154; 56 Ill., 365; 1 P. & B. (N. B.), 667; 12 Hun, 195; 74 N. Y., 302; 70 N. Y., 569; 28 Hun, 543; 40 id., 570; rev'd in 104 N. Y., 58, because the act to be performed was discretionary with the company. A special interest in relator is not necessary for the purpose of enforcing a duty relating to the public. *Peo. v. Supervisors*, 17 Hun, 501; rev'd on another point, 85 N. Y., 323; 37 id., 344; 11 Abb. Pr., 114; 91 U. S., 343. See 7 Neb., 357; 4 Dill., 479; 9 Cent. L. I., 86.

§ 17. ABANDONMENT OF FRANCHISE.

As to when a railroad company may abandon a part of its franchises. See *Com. v. Fitchburg Ry. Co.*, 12 Gray (Mass.), 180; *Wood on Railways*, p. 1711, 1713; 103 N. Y., 96; 86 id., 107; 108 N. Y., 98; 29 L. J. Ch., 561. aff'd, 8 H. L., 712; 3 Allen (Mass.), 9; 1 Sand. Ch., 280; 114 Mass., 37.

§ 18 HEATING CARS BY STOVES.

The provision relating to the heating of cars (L. 1887, ch. 616, A'MD L. 1888, ch. 189), on roads not less than fifty miles long, applies to a railroad of the prescribed length, partly in this state, partly without, although it extends less than fifty miles within this state. *Peo. v. N. Y., N. H. etc., Ry.*, 5 N. Y. 945; aff'd 8 id., 672. See *Peo. v. Clark*, 14 N. Y. S., 642.

§ 19. LIENS ON RAILROADS; PENALTIES.

Where a railroad has been placed in the hands of a receiver by the circuit court, lien claims under state statutes, may be filed in that court with the

same force and effect as if filed in the state court. *Blair v. St. L., H. & K. Ry.*, 19 Fed. R., 861.

But one penalty of fifty dollars can be recovered for all acts committed up to the commencement of the action. *Fisher v. N. Y., C., etc., Ry.*, 46 N. Y., 644. See, also, 49 id., 455; 30 id., 505; 26 id., 523; 49 Barb., 330.

§ 20. MISCELLANEOUS.

A railroad company should not accept perishable property unless it has means of immediate transportation. *Tierney v. N. Y. C., etc., Ry.*, 76 N. Y., 305; 104 id., 58; 80 id., 31; 12 id., 245; 49 Barb., 339.

A railroad company is not bound to open its draw-bridge for the passage of a barge with a mast so constructed that it could be lowered; and refusal so to open the bridge was not a detention of the vessel. *West Lancashire Ry. v. Iddon*, 49 L. T., 600.

A by-law enacted by officers of a corporation under and in conformity with an express act of the legislature, has the same force as though enacted by the legislature. *Presby. Ch. v. Mayor*, 5 Cow., 538; 4 Wheat., 652; 5 Abb. Pr., 422.

As to who are "fellow-servants," see 93 Ill., 302; 72 Ind., 31; 39 Ia., 246; 20 id., 347. **For definition of terms "laborer and labor,"** see *Balch v. N. Y. & O. M. Ry.*, 46 N. Y., 521; 42 Hun, 45.

Running at high speed. See 2 Brad. (Ill., 427); 73 Ind., 168; 38 Ia., 515; 76 Missouri, 80; 79 id., 336; 2 Neb. 335, 336; 46 N. W. (Wis.), 165; 42 Fed. R., 441; 13 N. Y. S., 177; 13 S. W. (Mo.), 806; 21 Atl. (Pa.), 140; 16 S. W., 384; 27 Ill. App., 438; aff'd, 22 N. E., 15; 129 Ill., 132; 95 U. S., 161; 70 N. Y., 119; 88 id., 42; 27 Hun, 532.

CHAPTER II.

THE GENERAL AND STOCK CORPORATION LAWS.

THE GENERAL CORPORATION LAW,¹ LAWS OF 1890, CHAPTER 563, AS AMENDED BY LAWS OF 1892, CHAPTER 687.

CHAPTER XXXV OF THE GENERAL LAWS.

SECTION 1. Short title.

2. Classification of corporations.
3. Definitions.
4. Qualifications of incorporators.
5. Filing and recording certificates of incorporation.
6. Corporations of the same name prohibited.
7. Amended and supplemental certificates.
8. Lost or destroyed certificates.
9. Certificate and other papers as evidence.
10. Prohibition of other than statutory powers.
11. Grant of general powers.
12. Limitation of amount of property of a non-stock corporation.
13. Acquisition of additional real property.
14. Acquisition of property in other states.
15. Certificate of authority of a foreign corporation.
16. Proof to be filed before granting certificate.
17. Acquisition of real property in this state by certain foreign corporations.
18. Acquisition by foreign corporations of real property in this state upon judicial sales.
19. Prohibition of banking powers.
20. Qualification of members as voters.
21. Proxies.
22. Challenges.
23. Effect of failure to elect directors.
24. Mode of calling special election of directors.
25. Mode of conducting special election of directors.
26. Qualification of voters and canvass of votes at special election.
27. Powers of supreme court respecting election.
28. Stay of proceedings in action collusively brought.
29. Quorum of directors and power of majority.
30. Directors as trustees in case of dissolution.
31. Forfeiture for non-user.
32. Extension of corporate existence.

¹ See Notes of Decisions upon Corporations at the end of this chapter.

SECTION 33. Conflicting corporate laws.

34. Laws repealed.
35. Saving clause.
36. Construction.
37. Law revived.

SECTION 1. **Short title.**—This chapter shall be known as the general corporation law.¹

§ 2. **Classification of corporations.**—A corporation shall be either,

1. A municipal corporation,
2. A stock corporation,
3. A non-stock corporation, or
4. A mixed corporation.

A stock corporation shall be either,

1. A monied corporation,
2. A transportation corporation, or
3. A business corporation.

A non-stock corporation shall be either,

1. A religious corporation, or
2. A membership corporation.

A mixed corporation shall be either,

1. A cemetery corporation.
2. A library corporation,
3. A co-operative corporation,
4. A board of trade corporation, or
5. An agricultural and horticultural corporation.

A transportation corporation shall be either,

1. A railroad corporation, or
2. A transportation corporation other than a railroad corporation.

A membership corporation shall include benevolent orders and fire and soldiers' monument corporations.

A reference in a general law to a class of corporations described in accordance with this classification shall include all corporations theretofore formed belonging to such class.

§ 3. **Definitions.**—A municipal corporation includes a county, town, school district, village and city and any other territorial division of the state established by law with powers of local government.

¹ See Table B, appended to this act, showing what laws it is based upon.

A stock corporation is a corporation having capital stock divided into shares.

A mixed corporation is a corporation which may or may not have capital stock at its option.

A monied corporation is a corporation formed under or subject to the banking or the insurance law.

A domestic corporation is a corporation incorporated by or under the laws of the state or colony of New York. Every corporation, which is not a domestic corporation, is a foreign corporation.

The term, directors, when used in relation to corporations, shall include trustees or other persons, by whatever name known, duly appointed or designated to manage the affairs of the corporation.

The term, certificate of incorporation, shall include articles of association or any other written instruments required by law to be filed, to effect the incorporation of a corporation, including a certified copy of an original certificate of incorporation, filed for such purpose in pursuance of law.

The term, member of a corporation, shall include every person having a right to vote at a meeting of the corporation for the election of directors, other than a person having a right to vote only upon a proxy.

The term, office of a corporation, means its principal office within the state, or principal place of business within the state if it has no principal office therein. The office of a stock corporation shall be in the county, town or city in which its business is principally carried on.

The term, business of a corporation, when used with reference to a non-stock corporation, includes the operations for the conduct of which it is incorporated.

The term, corporate law or laws, when used in any law forming a part of the revision of the general laws of the state of which this chapter is a part, means the general laws of the state relating to corporations included in such revision.

Former section 2 amended.

§ 4. Disqualification of incorporators.—A certificate of incorporation must be executed by natural persons, who must be of full age, and at least two-thirds of them must be citizens of the United States and a majority of them residents of this state.

This section shall not apply to a corporation formed by the re

incorporation or consolidation of existing corporations, or to the re-organization of a corporation upon the sale of the property and franchises of a previously existing corporation or otherwise.

New.

§ 5. Filing and recording certificates of incorporation.—

Every certificate of incorporation and amended or supplemental certificate hereafter executed, except of a religious, cemetery, monied, municipal or fire department corporation, shall be filed in the office of the Secretary of State, and shall be by him duly recorded and indexed in books specially provided therefor; and a certified copy of such certificate or amended or supplemental certificate with a certificate of the Secretary of State of such filing and record, or a duplicate original of such certificate or amended or supplemental certificate shall be filed and similarly recorded and indexed in the office of the clerk of the county in which the office of the corporation is to be located, or, if it be a non-stock corporation, and such county be not determined upon at the time of executing the certificate of incorporation, in such county clerk's office as the judge approving the certificate shall direct.

All taxes required by law to be paid before or upon incorporation and the fees for filing and recording such certificate must be paid before filing. No corporation shall exercise any corporate powers or privileges until such taxes and fees have been paid.

Former section 3 amended.

§ 6. Corporations of the same name prohibited.—No certificate of incorporation of a proposed incorporation having the same name as an existing domestic corporation, or a name so nearly resembling it as to be calculated to deceive, shall be filed or recorded in any office for the purpose of effecting its incorporation.

A corporation formed by the re-incorporation, re-organization or consolidation of other corporations or upon the sale of the property or franchises of a corporation, may have the same name as the corporation or one of the corporations to whose franchises it has succeeded.

Former section 4 amended.

§ 7. Amended and supplemental certificates.—If, in the original or amended certificate of incorporation of any corporation, or if in a supplemental certificate of any corporation any informality

exist, or if such certificate contain any matter not authorized by law to be stated therein, or if the proof or acknowledgment thereof shall be defective, the corporators or directors of the corporation may make and file an amended certificate correcting such informality or defect or striking out such unauthorized matter; and the certificate amended shall be deemed to be amended accordingly as of the date such amended certificate was filed, and upon the filing of such an amended certificate of incorporation, the corporation shall then for all purposes be deemed to be a corporation from the the time of filing the original certificate.

The supreme court may, upon due cause shown, and proof made, and upon notice to the Attorney-General, and to such other persons as the court may direct, and upon such terms and conditions as it may impose, amend any certificate of incorporation which fails to express the true object and purpose of the corporation, so as to truly set forth such object and purpose.

When an amended or supplemental certificate is filed, an entry shall be made upon the margin of the index and record of the original certificate of the date and place of record of every amended certificate.

The amendment of a certificate under this section shall be without prejudice to any pending action or proceeding, or to any rights previously accrued.

Former section 5 amended.

§ 8. Lost or destroyed certificates.—If either of the certificates of incorporation shall be lost or destroyed after filing, a certified copy of the other certificate may be filed in the place of the one so lost or destroyed and as of the date of its original filing, and such certified copy shall have the same force and effect as the original certificate had when filed.

Former section 6 without change.

§ 9. Certificate and other papers as evidence.—The certificate of incorporation of any corporation duly filed shall be presumptive evidence of its incorporation, and any amended certificate or other paper duly filed relating to the incorporation of any corporation, or its existence or management, and containing facts required by law to be stated therein, shall be presumptive evidence of the existence of such facts.

Former section 7 without change.

§ 10. Prohibition of other than statutory powers.—No

corporation shall possess or exercise any corporate powers not expressly given by law or not necessary to the exercise of the powers so given.

Former section 9 not changed except in phraseology.

§ 11. Grant of general powers.—Every corporation as such has power, though not specified in the law under which it is incorporated :

1. To have succession for the period specified in its certificate of incorporation or by-law, and perpetually when no period is specified.

2. To have a common seal, and alter the same at pleasure.

3. To acquire by grant, gift, purchase, devise or bequest, to hold and to dispose of such property as the purposes of the corporation shall require, subject to such limitations as may be prescribed by law.

4. To appoint such officers and agents as its business shall require, and to fix their compensation, and

5. To make by-laws, not inconsistent with any existing law, for the management of its property, the regulation of its affairs, and the transfer of its stock, if it has any. Such by-laws may also fix the amount of stock, which must be represented at meetings of the stockholders in order to constitute a quorum, unless otherwise provided by law. By-laws duly adopted at a meeting of the members of the corporation shall control the action of its directors.

No by-law regulating the election of directors or officers shall be valid unless published for at least two weeks in a newspaper in the county where the election is to be held, and at least thirty days before such election.

Subdivisions four and five of this section shall not apply to municipal corporations.

Former section 8 amended.

§ 12. Limitations of amount of property of a non-stock corporation.—A corporation not having capital stock may take and hold property not exceeding in value three million dollars, or the yearly income derived from which shall not exceed five hundred thousand dollars, notwithstanding the provisions of any general or special act heretofore passed or certificate of incorporation affecting such corporation.

In computing the value of such property, no increase in value

arising otherwise than from improvements made thereon shall be taken into account.

L. 1890, ch. 497.

New.

§ 13. **Acquisition of additional real property.**—When any corporation shall have sold or conveyed any part of its real property, the supreme court may, notwithstanding any restriction of a general or special law, authorize it to purchase and hold from time to time other real property, upon satisfactory proof that the value of the property so purchased does not exceed the value of the property so sold and conveyed within the three years next preceding the application.

Former section 10 amended.

§ 14. **Acquisition of property in other states.**—Any domestic corporation transacting business in other states or foreign countries may acquire and dispose of such property as shall be requisite for such corporation in the convenient transaction of its business.

Former section 11 amended.

§ 15. **Certificate of authority of a foreign corporation.**—No foreign stock corporation other than a monied corporation, shall do business in this state without having first procured from the Secretary of State a certificate that it has complied with all the requirements of law to authorize it to do business in this state, and that the business of the corporation to be carried on in this state is such as may be lawfully carried on by a corporation incorporated under the laws of this state for such or similar business, or, if more than one kind of business, by two or more corporations so incorporated for such kinds of business respectively. The Secretary of State shall deliver such certificate to every such corporation so complying with the requirements of law. No such corporation now doing business in this state shall do business herein after December 31, 1892, without having procured such certificate from the Secretary of State, but any lawful contract previously made by the corporation may be performed and enforced within the state subsequent to such date.

No foreign stock corporation doing business in this state without such certificate shall maintain any action in this state upon

any contract made by it in this state until it shall have procured such certificate.

New.

§ 16. Proof to be filed before granting certificate.—Before granting such certificate the Secretary of State shall require every such foreign corporation to file in his office a sworn copy of its charter or certificate of incorporation, and a statement under its corporate seal, particularly setting forth the business or objects of the corporation which it is engaged in carrying on, or which it proposes to carry on, within the state, and a place within the state which is to be its principal place of business, and designating, in the manner prescribed in the Code of Civil Procedure, a person upon whom process against the corporation may be served within the state.

The person so designated must have an office or place of business at the place where such corporation is to have its principal place of business within the state. Such designation shall continue in force until revoked by an instrument in writing designating in like manner some other person upon whom process against the corporation may be served in this state.

If the person so designated dies, or removes from the place where the corporation has its principal place of business within the state, and the corporation does not within thirty days after such death or removal, designate in like manner another person upon whom process against it may be served within the state, the Secretary of State may revoke the authority of the corporation to do business within the state, and process against the corporation in an action upon a liability incurred within this state before such revocation may, after such death or removal and before another designation is made, be served upon the Secretary of State. At the time of such service the plaintiff shall pay to the Secretary of State two dollars, to be included in his taxable costs and disbursements, and the Secretary of State shall forthwith mail a copy of such notice to such corporation, if its address or the address of any officer thereof is known to him.

New.

§ 17. Acquisition of real property in this state by certain foreign corporations.—Any foreign corporation created under the laws of the United States, or of any state or territory thereof, and doing business in this state, may acquire such real property in

this state as may be necessary for its corporate purposes in the transaction of its business in this state, and convey the same by deed or otherwise in the same manner as a domestic corporation.

Former section 12 amended.

§ 18. Acquisition by foreign corporations of real property in this state upon judicial sales.—Any foreign corporation may purchase at a sale upon the foreclosure of any mortgage held by it, or upon any judgment or decree for debts due, or upon any settlement to secure such debts, any real property within this state covered by or subject to such mortgage, judgment, decree or settlement, and hold the same for not exceeding five years from the date of such purchase, and convey it by deed or otherwise, in the same manner as a domestic corporation.

Former section 13.

§ 19. Prohibition of banking powers.—No corporation except a corporation formed under or subject to the banking laws, shall by any implication or construction be deemed to possess the power of carrying on the business of discounting bills, notes or other evidences of debt, of receiving deposits, of buying gold or silver bullion or foreign coins, or buying and selling bills of exchange, or shall issue bills, notes or other evidences of debt for circulation as money.

Former section 14.

§ 20. Qualification of members as voters.—At every election of directors and meeting of the members of any corporation, every member who is not in default in the payment of his subscriptions upon his stock or disqualified by the by-laws, shall be entitled to one vote, if a non-stock corporation, and, if a stock corporation, to one vote for every share of stock held by him for ten days immediately preceding the election or meeting.

Every pledgor of stock standing in his name on the books of the corporation shall be deemed the owner thereof for the purposes of this section.

The certificate of incorporation of any stock corporation may provide that at all elections of directors of such corporation, each stockholder shall be entitled to as many votes as shall equal the number of his shares of stock multiplied by the number of directors to be elected, and that he may cast all of such votes for a single director, or may distribute them among the number to be

voted for, or any two or more of them as he may see fit, which right, when exercised, shall be termed cumulative voting. The stockholders of a corporation heretofore formed, who, by the provisions of laws existing on April 30, 1891, were entitled to the exercise of such right, may hereafter exercise such right according to the provisions of this section.

No person shall vote or issue a proxy to vote at any meeting of the stockholders or bondholders, or both, of a stock corporation, upon any stock or bonds which have not been owned by him for at least ten days next preceding such meeting, notwithstanding such stock or bonds may stand in his name on the books of the corporation.

No member of a corporation shall sell his vote or issue a proxy to vote to any person for any sum of money or any thing of value.

The books and papers containing the record of membership of the corporation shall be produced at any meeting of its members upon the request of any member. If the right to vote at any such meeting shall be challenged, the inspectors of election, or other persons presiding thereat, shall require such books, if they can be had, to be produced as evidence of the right of the person challenged to vote at such meeting, and all persons who may appear from such books to be members of the corporation may vote at such meeting in person or by proxy, subject to the provisions of this chapter.

Part of section 54 of stock corporation law amended.

§ 21. **Proxies.**—Every member of a corporation, except a religious corporation, entitled to vote at any meeting thereof may so vote by proxy.

No officer, clerk, teller or bookkeeper of a corporation formed under or subject to the banking law shall act as proxy for any stockholder at any meeting of any such corporation.

Every proxy must be executed in writing by the member himself, or by his duly authorized attorney. No proxy hereafter made shall be valid after the expiration of eleven months from the date of its execution unless the member executing it shall have specified therein the length of time it is to continue in force, which shall be for some limited period. Every proxy shall be revocable at the pleasure of the person executing it; but a corporation having no capital stock may prescribe in its by-laws the per-

sons who may act as proxies for members, and the length of time for which proxies may be executed.

Part of section 54 of stock corporation law amended,

§ 22. Challenges.—Every member of a corporation offering to vote at any election or meeting of the corporation shall, if required by an inspector of election or other officer presiding at such election or meeting, or by any other member present, take and subscribe the following oath: "I do solemnly swear that in voting at this election I have not, either directly, indirectly or impliedly, received any promise or any sum of money, or any thing of value to influence the giving of my vote or votes at this meeting or as a consideration therefor."

If it is a stock corporation, the oath so taken and subscribed shall contain the following additional provision: "That I have not sold or otherwise disposed of my interest in or title to any shares of stock or bonds in respect to which I offer to vote at this election, but that all such shares or bonds are still owned by me."

Any person offering to vote as proxy for any other person shall present his proxy and, if so required, take and subscribe the following oath:

"I do solemnly swear that I have not, either directly, indirectly or impliedly, given any promise or any sum of money or any thing of value to induce the giving of a proxy to me to vote at this election, or received any promise or any sum of money or any thing of value to influence the giving of my vote at this meeting, or as a consideration therefor."

If a stock corporation, the oath so taken and subscribed shall contain the following additional provision:

"And that the title to the stock and bonds upon which I now offer to vote is, to the best of my knowledge and belief, truly and in good faith vested in the persons in whose names they now stand."

The inspectors or persons presiding at the election may administer such oath, and all such oaths and proxies shall be filed in the office of the corporation.

Part of section 54 of stock corporation law amended.

§ 23. Effect of failure to elect directors.—If the directors shall not be elected on the day designated in the by-laws, or by-law, the corporation shall not for that reason be dissolved; but

every director shall continue to hold his office and discharge his duties until his successor has been elected.

Former section 18.

§ 24. Mode of calling special election of directors.—If the election has not been held on the day so designated, the directors shall forthwith call a meeting of the members of the corporation for the purpose of electing directors, of which meeting notice shall be given in the same manner as of the annual meeting for the election of directors.

If such meeting shall not be so called within one month, or, if held, shall result in a failure to elect directors, any member of the corporation may call a meeting for the purpose of electing directors by publishing a notice of the time and place of holding such meeting at least once in each week for two successive weeks immediately preceding the election, in a newspaper published in the county where the election is to be held and in such other manner as may be prescribed in the by-laws for the publication of notice of the annual meeting, and by serving upon each member, either personally or by mail, directed to him at his last known post-office address, a copy of such notice at least two weeks before the meeting.

Transferred from stock corporation law, sections 53, 54 and 55.

§ 25. Mode of conducting special elections of directors.—Such meeting shall be held at the office of the corporation, or if it has none, at the place in this state where its principal business has been transacted, or if access to such office or place is denied, or cannot be had, at some other place in the city, village or town where such office or place is or was located.

At such meeting the members attending shall constitute a quorum. They may elect inspectors of election and directors and adopt by-laws providing for future annual meetings and election of directors, if the corporation has no such by-laws, and transact any other business which may be transacted at an annual meeting of the members of the corporation.

§ 26. Qualification of voters and canvass of votes at special elections.—In the absence at such meeting of the books of the corporation showing who are members thereof, each person, before voting, shall present his sworn statement setting forth that he is a member of the corporation; and if a stock corporation,

the number of shares of stock owned by him and standing in his name on the books of the corporation, and, if known to him, the whole number of shares of stock of the corporation outstanding. On filing such statement, he may vote as a member of the corporation; and if a stock corporation, he may vote on the shares of stock appearing in such statement to be owned by him and standing in his name on the books of the corporation.

The inspectors shall return and file such statements, with a certificate of the result of the election, verified by them, in the office of the clerk of the county in which such election is held, and the persons so elected shall be the directors of the corporation.

Id.

§ 27. Powers of supreme court respecting elections.—The supreme court shall, upon the application of any person or corporation aggrieved by or complaining of any election of any corporation, or any proceeding, act or matter touching the same, upon notice thereof to the adverse party, or to those to be affected thereby, forthwith and in a summary way, hear the affidavits, proofs and allegations of the parties, or otherwise inquire into the matters or causes of complaint, and establish the election or order a new election, or make such order and give such relief as right and justice may require.

Former section 15.

§ 28. Stay of proceedings in actions collusively brought.—If an action is brought against a corporation by the procurement or default of its directors, or any of them, to enforce any claim or obligation declared void by law, or to which the corporation has a valid defense, and such action is in the interest or for the benefit of any director, and the corporation has by its connivance made default in such action, or consented to the validity of such claim or obligation, any member of the corporation may apply to the supreme court, upon affidavit, setting forth the facts, for a stay of proceedings in such action, and on proof of the facts in such further manner and upon such notice as the court may direct, it may stay such proceedings or set aside and vacate the same, or grant such other relief as may seem proper, and which will not injuriously affect an innocent party, who, without notice of such wrongdoing and for a valuable consideration, has acquired rights under such proceedings.

Former section 16 amended.

§ 29. Quorum of directors and powers of majority.—The affairs of any corporation shall be managed by its board of directors, at least two of whom shall be residents of this state. Unless otherwise provided by law a majority of the board of directors of a corporation at a meeting duly assembled shall be necessary to constitute a quorum for the transaction of business, and the act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors. Subject to the by-laws, if any, adopted by the members of a corporation, the directors may make necessary by-laws of the corporation.

Former section 17 amended.

§ 30. Directors as trustees in case of dissolution.—Upon the dissolution of any corporation, its directors, unless other persons shall be appointed by the legislature, or by some court of competent jurisdiction, shall be the trustees of its creditors, stockholders or members, and shall have full power to settle its affairs, collect and pay outstanding debts and divide among the persons entitled thereto the money and other property remaining after payment of debts and necessary expenses.

Such trustees shall have authority to sue for and recover the debts and property of the corporation, by their name as such trustees, and shall jointly and severally be personally liable to its creditors, stockholders or members, to the extent of its property and effects that shall come into their hands.

Former sections 19 and 20 consolidated.

§ 31. Forfeiture for non-user.—If any corporation, except a railroad, turnpike, plank-road or bridge corporation, shall not organize and commence the transaction of its business or undertake the discharge of its corporate duties within two years from the date of its incorporation, its corporate powers shall cease.

Former section 21.

§ 32. Extension of corporate existence.—Any domestic corporation at any time within three years before the expiration thereof, may extend the term of its existence beyond the time specified in its original certificate of incorporation, or by-law, or in any certificate of extension of corporate existence, by the consent of the stockholders owning two-thirds in amount of its capital stock, if not a stock corporation, by the consent of two-

thirds of its members, in and by a certificate signed and acknowledged by them and filed in the offices in which the original certificates of its incorporation were filed, if at all, and, if not, then in the offices where certificates of incorporation are now required by law to be filed, and the officers with whom the same may be filed shall thereupon record them in the books kept in their respective offices for the record of such certificates, and make a memorandum of such record in the margin of the original certificate in such book, if any, and thereupon the time of existence of such corporation shall be extended, as designated in such certificate, for a term not exceeding the term for which it was incorporated in the first instance. If the term of existence of any domestic corporation shall have expired and it shall be made satisfactorily to appear to the supreme court that such corporation was legally organized pursuant to any law of this state, and that through mistake it shall have issued its bonds payable at a date beyond the date fixed in its charter or certificate of incorporation for the expiration of its corporate existence, and such bonds shall be unmatured and unpaid, the supreme court may, upon the application of any person interested and upon such notice to such other parties as the court may require, by order, authorize the filing and recording of a certificate reviving the existence of such corporation, upon such conditions and with such limitations as such order shall specify, and extending such corporate existence for a term not exceeding the term for which it was originally incorporated. Upon filing and recording such certificate in the same manner as a certificate of extension of corporate existence duly issued before the expiration of the existence of a domestic corporation is authorized by law to be filed and recorded, such corporate existence shall be revived and extended in pursuance of the terms of such order; but such revival and extension shall not affect any litigation commenced after such expiration and pending at the time of such revival.

If a corporation formed under or subject to the banking law, such certificate shall not be filed or recorded unless it shall have indorsed thereon the written approval of the superintendent of banks; or, if an insurance corporation, unless it shall have indorsed thereon the written approval of the superintendent of insurance; and, if a turnpike or bridge corporation, it shall not be filed unless it shall have indorsed thereon or annexed thereto a certified copy of a resolution of the board of supervisors of each county in

which turnpike or bridge is located, approving and authorizing such extension.

Every corporation extending its corporate existence under this chapter or under any general law of the state shall thereafter be subject to the provisions of this chapter and of such general law, notwithstanding any special provisions in its charter, and shall thereafter be deemed to be incorporated under the general laws of the state relating to the incorporation of a corporation for the purpose of carrying on the business in which it is engaged, and shall be subject to the provisions of such laws.

Former section 22 amended.

§ 33. **Conflicting corporate laws.**—If in any corporate law there is or shall be any provision in conflict with any provision of this chapter or of the stock corporation law, the provisions so conflicting shall prevail, and the provision of this chapter or of the stock corporation law with which it conflicts shall not apply in such a case. If in any such law there is or shall be a provision relating to a matter embraced in this chapter or in the stock corporation law, but not in conflict with it, such provision in such other law shall be deemed to be in addition to the provision in this chapter or in the stock corporation law relating to the same subject-matter, and both provisions shall, in such case, be applicable.

New.

§ 34. **Laws repealed.**—Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is repealed. Such repeal shall not revive a law repealed by any law hereby repealed, but shall include all laws amendatory of the laws hereby repealed.

Former section 23.

§ 35. **Saving clause.**—The repeal of a law or any part of it specified in the annexed schedule shall not affect or impair any act done, or right accruing, accrued or acquired, or liability, penalty, forfeiture or punishment incurred prior to May 1, 1891, under and by virtue of any law so repealed, but the same may be asserted, enforced, prosecuted or inflicted, as fully and to the same extent as if such law had not been repealed. All actions and proceedings, civil or criminal, commenced under or by virtue of the laws so repealed, and pending on April 30, 1891, may be prosecuted and defended to final effect in the same manner as they

might under the laws then existing, unless it shall be otherwise specially provided by law.

Former section 24.

§ 36. Construction.—The provisions of this chapter, and of the stock corporation law, the railroad law, the transportation corporations law, and the business corporations law, so far as they are substantially the same as those of laws existing on April 30, 1891, shall be construed as a continuation of such laws modified or amended according to the language employed in this chapter, or in the stock corporation law, the railroad law, the transportation corporations law, or the business corporations law, and not as new enactments.

References in laws not repealed to provisions of laws incorporated into the general laws hereinbefore enumerated and repealed, shall be construed as applying to the provisions so incorporated.

Nothing in this chapter or in the other general laws hereinbefore specified shall be construed to amend or repeal any provision of the Criminal or Penal Code, or to impair any right or liability which any existing corporation, its officers, directors, stockholders or creditors may have or be subject to or which any such corporation, other than a railroad corporation, had or was subject to on April 30, 1891, by virtue of any special act of the legislature creating such corporation or creating or defining any such right or liability, unless such special act is repealed by this chapter.

Former section 25 amended.

§ 37. Law revived.—Chapter three hundred of the laws of eighteen hundred and fifty-five, entitled "An act to incorporate the Baptist Historical Society of the city of New York," which was inadvertently repealed by the transportation corporations law, is revived and re-enacted, and shall be of the same force and effect as if it had not been repealed.

SCHEDULE OF LAWS REPEALED.

REVISED STATUTES.	Part I, chapter 18.	All.
Laws of	Chapter	SECTIONS.
1811.....	67.....	All.
1815.....	47.....	All.
1815.....	202.....	All.
1816.....	58.....	All.
1817.....	223.....	All.
1818.....	67.....	All.
1819.....	102.....	All.
1821.....	14.....	All.
1822.....	213.....	All.
1836.....	284.....	All.
1836.....	316.....	All.
1838.....	160.....	All.
1838.....	161.....	All.
1838.....	262.....	All.
1839.....	218.....	All.
1842.....	165.....	All.
1846.....	155.....	All.
1846.....	215.....	17, 18.
1847.....	100.....	3, 4.
1847.....	210.....	All.
1847.....	222.....	All.
1847.....	270.....	All.
1847.....	272.....	All.
1847.....	287.....	All.
1847.....	398.....	All.
1847.....	404.....	All.
1847.....	405.....	All.
1848.....	37.....	All.
1848.....	40.....	All.
1848.....	45.....	All.
1848.....	259.....	All.
1848.....	265.....	All.
1848.....	360.....	All.
1849.....	250.....	All.
1849.....	362.....	All.
1850.....	71.....	All.
1850.....	140.....	All.
1851.....	14.....	All.
1851.....	19.....	All.
1851.....	98.....	All.
1851.....	107.....	All.
1851.....	487.....	All.
1851.....	497.....	All.
1852.....	228.....	All.
1852.....	372.....	All.

SCHEDULE OF LAWS REPEALED — (Continued.)

Laws of	Chapter	SECTIONS.
1853.....	53.....	All.
1853.....	117.....	All.
1853.....	124.....	All.
1853.....	135.....	All.
1853.....	245.....	All.
1853.....	333.....	All.
1853.....	471.....	1, 2,
1853.....	481.....	All.
1853.....	502.....	All.
1853.....	626.....	All.
1854.....	3.....	All.
1854.....	87.....	All.
1854.....	140.....	All.
1854.....	201.....	All.
1854.....	232.....	All.
1854.....	269.....	All.
1854.....	282.....	All.
1854.....	312.....	All.
1855.....	301.....	All.
1855.....	302.....	All.
1855.....	390.....	All.
1855.....	478.....	All.
1855.....	485.....	All.
1855.....	495.....	All.
1855.....	546.....	All.
1855.....	559.....	All.
1856.....	65.....	All.
1857.....	29.....	All.
1857.....	83.....	All.
1857.....	185.....	All.
1857.....	202.....	All.
1857.....	262.....	All.
1857.....	444.....	All.
1857.....	546.....	All.
1857.....	558.....	All.
1857.....	643.....	All.
1857.....	776.....	All.
1858.....	10.....	All.
1858.....	125.....	All.
1859.....	209.....	All.
1859.....	311.....	All.
1859.....	455.....	All.
1860.....	116.....	All.
1860.....	269.....	All.
1860.....	523.....	All.
1861.....	149.....	All.
1861.....	170.....	All.
1861.....	215.....	All.

SCHEDULE OF LAWS REPEALED—(Continued.)

Laws of	Chapter	SECTIONS.
1861.....	238.....	All.
1862.....	205.....	All.
1862.....	248.....	All.
1862.....	425.....	All.
1862.....	438.....	All.
1862.....	449.....	All.
1862.....	472.....	All.
1863.....	63.....	All.
1863.....	134.....	All.
1863.....	346.....	All.
1864.....	85.....	All.
1864.....	337.....	All.
1864.....	517.....	All.
1864.....	582.....	All.
1865.....	234.....	All.
1865.....	246.....	All.
1865.....	307.....	All.
1865.....	691.....	All.
1865.....	780.....	All.
1866.....	73.....	All.
1866.....	259.....	All.
1866.....	322.....	All.
1866.....	371.....	All.
1866.....	697.....	All.
1866.....	780.....	All.
1866.....	799.....	All.
1866.....	838.....	All.
1867.....	12.....	All.
1867.....	49.....	All.
1867.....	248.....	All.
1867.....	254.....	All.
1867.....	419.....	All.
1867.....	480.....	All.
1867.....	509.....	All.
1867.....	775.....	All.
1867.....	906.....	All.
1867.....	937.....	All.
1867.....	960.....	All.
1867.....	974.....	All.
1868.....	253.....	All.
1868.....	290.....	All.
1868.....	573.....	All.
1868.....	781.....	All.
1869.....	234.....	All.
1869.....	237.....	All.
1869.....	605.....	All.
1869.....	706.....	All.
1869.....	844.....	All.

SCHEDULE OF LAWS REPEALED — (Continued.)

Laws of	Chapter	SECTIONS.
1869.....	917.....	All.
1870.....	124.....	All.
1870.....	135.....	All.
1870.....	322.....	All.
1870.....	443.....	All.
1870.....	568.....	All.
1870.....	773.....	All.
1871.....	95.....	All.
1871.....	481.....	All.
1871.....	535.....	All.
1871.....	560.....	All.
1871.....	657.....	All.
1871.....	669.....	All.
1871.....	697.....	All.
1871.....	883.....	All.
1872.....	81.....	All.
1872.....	128.....	All.
1872.....	146.....	All.
1872.....	248.....	All.
1872.....	283.....	All.
1872.....	350.....	All.
1872.....	374.....	All.
1872.....	426.....	All.
1872.....	609.....	All.
1872.....	611.....	All.
1872.....	779.....	All.
1872.....	780.....	All.
1872.....	820.....	All except 20.
1872.....	829.....	All.
1872.....	843.....	All.
1873.....	151.....	All.
1873.....	352.....	All.
1873.....	432.....	All.
1873.....	440.....	All.
1873.....	469.....	All.
1873.....	616.....	All.
1873.....	710.....	All.
1873.....	737.....	All.
1873.....	814.....	All.
1874.....	76.....	All.
1874.....	143.....	All.
1874.....	149.....	All.
1874.....	240.....	All.
1874.....	288.....	All.
1874.....*	430.....	All.
1875.....	4.....	All.
1875.....	58.....	All.
1875.....	88.....	All.

SCHEDULE OF LAWS REPEALED — (Continued.)

Laws of	Chapter	SECTIONS.
1875.....	108.....	All.
1875.....	113.....	All.
1875.....	119.....	All.
1875.....	120.....	All.
1875.....	159.....	All.
1875.....	193.....	All.
1875.....	256.....	All.
1875.....	319.....	All.
1875.....	365.....	All.
1875.....	445.....	All.
1875.....	510.....	All.
1875.....	586.....	All.
1875.....	598.....	All.
1875.....	606.....	All.
1875.....	611.....	All.
1876.....	77.....	All.
1876.....	135.....	All.
1876.....	198.....	All.
1876.....	280.....	All.
1876.....	358.....	All.
1876.....	373.....	All.
1876.....	415.....	All.
1876.....	435.....	All.
1876.....	446.....	All.
1877.....	103.....	All.
1877.....	158.....	All.
1877.....	164.....	All.
1877.....	171.....	All.
1877.....	224.....	All.
1877.....	266.....	All.
1877.....	374.....	All.
1878.....	61.....	All.
1878.....	121.....	All.
1878.....	163.....	All.
1878.....	203.....	All.
1878.....	210.....	All.
1878.....	261.....	All.
1878.....	264.....	All.
1878.....	316.....	All.
1878.....	334.....	All.
1878.....	394.....	All.
1879.....	214.....	All.
1879.....	253.....	All.
1879.....	290.....	All.
1879.....	293.....	All.
1879.....	350.....	All.
1879.....	377.....	All.
1879.....	393.....	All.

SCHEDULE OF LAWS REPEALED — (Continued.)

Laws of	Chapter	SECTIONS.
1879.....	395.....	All.
1879.....	413.....	All.
1879.....	415.....	All.
1879.....	441.....	All.
1879.....	503.....	All.
1879.....	505.....	All.
1879.....	512.....	All.
1879.....	541.....	All.
1880.....	5.....	All.
1880.....	85.....	All.
1880.....	90.....	All.
1880.....	94.....	All.
1880.....	113.....	All.
1880.....	133.....	All.
1880.....	155.....	All.
1880.....	182.....	All.
1880.....	187.....	All.
1880.....	223.....	All.
1880.....	225.....	All.
1880.....	241.....	All.
1880.....	254.....	All.
1880.....	263.....	All.
1880.....	267.....	All.
1880.....	349.....	All.
1880.....	415.....	All.
1880.....	417.....	All.
1880.....	484.....	All.
1880.....	510.....	All.
1880.....	575.....	All.
1880.....	582.....	All.
1880.....	583.....	All.
1880.....	585.....	All.
1881.....	22.....	All.
1881.....	58.....	All.
1881.....	77.....	All.
1881.....	117.....	All.
1881.....	148.....	All.
1881.....	213.....	All.
1881.....	232.....	All.
1881.....	295.....	All.
1881.....	296.....	All.
1881.....	311.....	All.
1881.....	313.....	All.
1881.....	321.....	All.
1881.....	337.....	All.
1881.....	338.....	All.
1881.....	351.....	All.
1881.....	399.....	All.

SCHEDULE OF LAWS REPEALED — (*Continued.*)

Laws of	Chapter	SECTIONS.
1881.....	422.....	All.
1881.....	464.....	All.
1881.....	468.....	All.
1881.....	470.....	All.
1881.....	472.....	All.
1881.....	485.....	All.
1881.....	551.....	All.
1881.....	589.....	All.
1881.....	649.....	All.
1881.....	650.....	All.
1881.....	674.....	All.
1881.....	685.....	All.
1882.....	73.....	All.
1882.....	82.....	All.
1882.....	140.....	All.
1882.....	273.....	All.
1882.....	289.....	All.
1882.....	290.....	All.
1882.....	306.....	All.
1882.....	309.....	All.
1882.....	349.....	All.
1882.....	353.....	All.
1882.....	393.....	All.
1882.....	405.....	All.
1883.....	46.....	All.
1883.....	71.....	All.
1883.....	102.....	All.
1883.....	216.....	All.
1883.....	232.....	All.
1883.....	237.....	All.
1883.....	238.....	All.
1883.....	240.....	All.
1883.....	287.....	All.
1883.....	323.....	All.
1883.....	361.....	All.
1883.....	381.....	All.
1883.....	382.....	All.
1883.....	384.....	All.
1883.....	386.....	All.
1883.....	387.....	All.
1883.....	388.....	All.
1883.....	409.....	All.
1883.....	482.....	All.
1883.....	483.....	All.
1883.....	497.....	All.
1884.....	140.....	All.
1884.....	193.....	All.
1884.....	208.....	All.

SCHEDULE OF LAWS REPEALED—(Continued.)

Laws of	Chapter	SECTIONS.
1884.....	223.....	All.
1884.....	252.....	All.
1884.....	267.....	All.
1884.....	367.....	All.
1884.....	386.....	All.
1884.....	397.....	All.
1884.....	421.....	All.
1884.....	422.....	All.
1884.....	439.....	All.
1884.....	441.....	All.
1884.....	444.....	All.
1885.....	84.....	All.
1885.....	127.....	All.
1885.....	141.....	All.
1885.....	153.....	All.
1885.....	171.....	All.
1885.....	305.....	All.
1885.....	369.....	All.
1885.....	422.....	All.
1885.....	423.....	All.
1885.....	489.....	All.
1885.....	498.....	All.
1885.....	535.....	All.
1885.....	540.....	All.
1885.....	549.....	All.
1886.....	65.....	All.
1886.....	182.....	All.
1886.....	271.....	All.
1886.....	321.....	All.
1886.....	322.....	All.
1886.....	403.....	All.
1886.....	415.....	All.
1886.....	509.....	All.
1886.....	551.....	All.
1886.....	579.....	All.
1886.....	586.....	All.
1886.....	592.....	All.
1886.....	601.....	All.
1886.....	605.....	All.
1886.....	634.....	All.
1886.....	642.....	All.
1887.....	450.....	All.
1887.....	486.....	All.
1887.....	536.....	All.
1887.....	570.....	All.
1887.....	616.....	All.
1887.....	622.....	All.
1887.....	724.....	All.

SCHEDULE OF LAWS REPEALED — (Concluded).

LAWS of	Chapter	SECTIONS
1888.....	189.....	All.
1888.....	306.....	All.
1888.....	313.....	All.
1888.....	359.....	All.
1888.....	394.....	All.
1888.....	447.....	All.
1888.....	462.....	All.
1888.....	513.....	All.
1888.....	514.....	All.
1888.....	549.....	All.
1888.....	560.....	All.
1889.....	57.....	All.
1889.....	76.....	All.
1889.....	78.....	All.
1889.....	236.....	All.
1889.....	242.....	All.
1889.....	281.....	All.
1889.....	332.....	All.
1889.....	369.....	All.
1889.....	426.....	All.
1889.....	519.....	All.
1889.....	524.....	All.
1889.....	531.....	All.
1889.....	532.....	All.
1889.....	564.....	All.
1890.....	23.....	All.
1890.....	98.....	All.
1890.....	119.....	All.
1890.....	193.....	All.
1890.....	292.....	All.
1890.....	416.....	All.
1890.....	421.....	All.
1890.....	483.....	All.
1890.....	497.....	All.
1890.....	505.....	All.
1890.....	508.....	All.
1890.....	543.....	All.
1891.....	57.....	All.
1891.....	287.....	All.
1892.....	2.....	All.

II. THE STOCK CORPORATION LAW.¹ LAWS OF 1890, CHAPTER 564, AS AMENDED BY LAWS OF 1892, CHAPTER 688.

CHAPTER XXXVI OF THE GENERAL LAWS.

ARTICLE 1. General powers; reorganization (§§ 1-7).

2. Directors and officers; their election, duties and liabilities (§§ 20-32).

3. Stock; stockholders, their rights and liabilities (§§ 40-55).

ARTICLE I.

GENERAL POWERS; REORGANIZATION.

SECTION 1. Short title, and application of chapter.

2. Power to borrow money and mortgage property.

3. Reorganization upon sale of corporate property and franchises.

4. Contents of plan or agreement.

5. Sale of property; possession of receiver and suits against him.

6. Assent of stockholders to plan of readjustment.

7. Combinations prohibited.

SECTION 1. Short title and application of chapter.—This chapter shall be known as the stock corporation law,² but article one shall not apply to monied corporations.

Former section 1 amended.

§ 2. Power to borrow money and mortgage property.—In addition to the powers conferred by the general corporation law, every stock corporation shall have power to borrow money or contract debts, when necessary for the transaction of its business, or for the exercise of its corporate rights, privileges or franchises, or for any other lawful purpose of its incorporation; and may issue and dispose of its obligations for any amount so borrowed, and may mortgage its property and franchises to secure the payment of such obligations or of any debt contracted for the purposes herein specified; and the amount of the obligations issued and outstanding at any one time secured by such mortgages, excepting mortgages given as a consideration for the purchase of real estate, and mortgages authorized by contracts made prior to May first, 1891, shall not exceed the amount of its paid up capital stock, or an amount equal to two-thirds of the value of its corporate property at the time of issuing the obligations

¹ See Notes of Decisions upon Corporations, at the end of this chapter.

² See Table C, appended to this act, showing what laws it is based upon.

secured by such mortgages, in case such two-thirds value shall be more than the amount of such paid up capital stock. No such mortgages, except purchase-money mortgages, shall be issued without the consent of the stockholders owning at least two-thirds of the stock of the corporation, which consent shall be in writing and shall be filed and recorded in the office of the clerk or register of the county where it has its principal place of business, or shall be given by vote at a special meeting of the stockholders called for that purpose; and a certificate of the vote at such meeting, signed and sworn to by the chairman and secretary of such meeting, shall be filed and recorded as aforesaid. When authorized by such consent, the directors, under such regulations as they may adopt, may confer on the holder of any debt or obligation secured by such mortgage the right to convert the principal thereof, after two and not more than twelve years from the date of the mortgage, into stock of the corporation; and if the capital stock shall not be sufficient to meet the conversion when made, the stockholders shall, in the manner herein provided, authorize an increase of capital stock sufficient for that purpose.

Former section 2 amended.

§ 3. Reorganization upon sale of corporate property and franchises.—When the property and franchises of any domestic stock corporation shall be sold by virtue of a mortgage or deed of trust, duly executed by it, or pursuant to the judgment or decree of a court of competent jurisdiction, or by virtue of an execution issued thereon, and the purchaser at such sale shall acquire title to the same in the manner prescribed by law, he may associate with him any number of persons, not less than the number required by law for the incorporation of such corporation, a majority of whom shall be citizens and residents of this state, and they may become a corporation, and take and possess the property and franchises thus sold, and which were at the time of sale possessed by the corporation whose property shall have been so sold, upon making, acknowledging and filing in the offices where certificates of incorporation are required by law to be filed, a certificate in which they shall describe by name and reference to the law under which it was organized, the corporation whose property and franchises they have acquired, and the court by whose authority the sale had been made, with the date of the judgment or decree authorizing or directing the same,

and a brief description of the property sold, and also the following particulars :

1. The name of the new corporation intended to be formed by the filing of such certificate.

2. The maximum amount of its capital stock and the number of shares into which it is to be divided, specifying the classes thereof, whether common or preferred, and the amount of and rights pertaining to each class.

3. The number of directors, not less nor more than the number required by law for the old corporation, who shall manage the affairs of the new corporation, and the names and post-office addresses of the directors for the first year.

4. Any plan or agreement which may have been entered into at or previous to the time of sale, in anticipation of the formation of the new corporation, and pursuant to which such purchase was made. Such corporation shall be vested with and be entitled to exercise and enjoy all the rights, privileges and franchises, which at the time of such sale belonged to, or were vested in the corporation last owning the property sold, or its receiver, and shall be subject to all the provisions, duties and liabilities imposed by law on such corporations.

Former section 3 without change.

§ 4. Contents of plan or agreement.—At or previous to the sale the purchasers thereat, or the persons for whom the purchase is to be made, may enter into a plan or agreement, for or in anticipation of the readjustment of the respective interests therein of the mortgage creditors and stockholders of the corporation owning such property and franchises at the time of sale, and for the representation of such interests of creditors and stockholders in the bonds or stock of the new corporation to be formed, and may therein regulate voting by the holders of the preferred and common stock at any meeting of the stockholders, and by the holders and owners of any or all of the bonds of the corporation foreclosed, or of the bonds issued or to be issued by the new corporation, and such right of voting by bondholders shall be exercised in such manner, for such period, and upon such conditions, as shall be therein described. Such plan or agreement must contain suitable provision for the bondholders voting by proxy and must not be inconsistent with the laws of the state and shall be binding upon the corporation, until changed as therein provided, or as otherwise provided by law. The new corporation when duly or-

ganized, pursuant to such plan or agreement and to the provisions of law, may issue its bonds and stock in conformity with the provisions of such plan or agreement, and may at any time within six months after its organization, compromise, settle or assume the payment of any debt, claim or liability of the former corporation upon such terms as may be lawfully approved by a majority of the agents or trustees intrusted with the carrying out of the plan or agreement of reorganization, and may establish preferences in respect to the payment of dividends in favor of any portion of its capital stock and may divide its stock into classes, but the capital stock of the new corporation shall not exceed in the aggregate the maximum amount of stock mentioned in the certificate of incorporation, nor shall the bonds issued by it exceed in the aggregate the amount which a corporation is authorized by the provisions of this article to issue.

Former section 4 without change.

§ 5. Sale of property; possession of receiver and suits against him.—The supreme court may direct a sale of the whole of the property, rights and franchises covered by the mortgage or mortgages, or deeds of trust foreclosed at any one time and place to be named in the judgment or order, either in case of the non-payment of interest only, or of both the principal or interest due and unpaid and secured by any such mortgage or mortgages or deeds of trust. Neither the sale nor the formation of the new corporation shall interfere with the authority or possession of any receiver of such property and franchises, but he shall remain liable to be removed or discharged at such time as the court may deem proper. No suit or proceeding shall be commenced against such receiver unless founded on willful misconduct or fraud in his trust after the expiration of sixty days from the time of his discharge; but after the expiration of sixty days the new corporation shall be liable in any action that may be commenced against it, and founded on any act or omission of such receiver for which he may not be sued, and to the same extent as the receiver, but for this section would be or remain liable, or to the same extent that the new corporation would be had it done or omitted the acts complained of.

§ 6. Stockholders may assent to plan of readjustment.—Every stockholder in any corporation, the franchises and property whereof shall have been thus sold, may assent to the plan of re-

adjustment and reorganization of interests pursuant to which such franchises and property shall have been purchased at any time within six months after the organization of the new corporation, and by complying with the terms and conditions of such plan become entitled to his pro rata benefits therein. The commissioners, corporate authorities or proper officers of any city, town or village who may hold stock in any corporation, the property and franchises whereof, shall be liable to be sold, may assent to any plan or agreement of reorganization which lawfully provides for the formation of a new corporation, and the issue of stock therein to the proper authorities or officers of such cities, towns or villages in exchange for the stock of the old or former corporation by them respectively held. And such commissioners, corporate authorities or other proper officers may assign, transfer or surrender the stock so held by them in the manner required by such plan, and accept in lieu the stock issued by such new corporation in conformity therewith.

Former section 6 amended.

§ 7. Combinations prohibited.—No stock corporation shall combine with any other corporation or person for the creation of a monopoly or the unlawful restraint of trade or for the prevention of competition in any necessary of life.

Former section 7 amended.

ARTICLE II.

DIRECTORS AND OFFICERS; THEIR ELECTION, DUTIES AND LIABILITIES.

SECTION 20. Directors.

21. Change of number of directors.
22. When acts of directors void.
23. Liability of directors for making unauthorized dividends.
24. Liability of directors for contracting unauthorized debts and over issue of bonds.
25. Liability of directors for loans to stockholders.
26. Transfers of stock by stockholders indebted to corporation.
27. Officers.
28. Inspectors and their oath.
29. Books to be kept.
30. Annual report.
31. Liability of officers for false certificates, reports or public notices.
32. Alteration or extension of business.

§ 20. Directors.—The directors of every stock corporation shall be chosen from the stockholders at the time and place fixed by the by-laws of the corporation by a plurality of the votes of

the stockholders voting at such election. Vacancies in the board of directors shall be filled in the manner prescribed in the by-laws, and if a director shall cease to be a stockholder his office shall become vacant. Notice of the time and place of holding any election of directors shall be given by publication thereof, at least once in each week for two successive weeks immediately preceding such election, in a newspaper published in the county where such election is to be held, and in such other manner as may be prescribed in the by-laws. Policy holders of an insurance corporation shall be eligible to election as directors. At least one-fourth in number of the directors of every stock corporation shall be elected annually.

Former section 20 amended.

§ 21. Change of number of directors.—The number of directors of any stock corporation may be increased or reduced, but not above the maximum nor below the minimum number prescribed by law, when the stockholders, owning a majority of the stock of the corporation shall so determine, at a meeting to be held at the usual place of meeting of the directors, on two weeks' notice in writing to each stockholder of record. Such notice shall be served personally or by mail, directed to each stockholder at his last known post-office address. Proof of the service of such notice shall be filed in the office of the corporation at or before the time of such meeting. The proceedings of such meeting shall be entered in the minutes of the corporation and a transcript thereof, verified by the president and secretary of the meeting, shall be filed in the offices where the original certificates of incorporation were filed. If a corporation formed under or subject to the banking law, the consent of the superintendent of banks, and if an insurance corporation, the consent of the superintendent of insurance, shall be first obtained to such increase or reduction of the number of directors.

Former section 21 amended.

§ 22. When acts of directors void.—When the directors of any corporation for the first year of its corporate existence shall hold over and continue to be directors after the first year, because of their neglect or refusal to adopt the by-laws required to enable the stockholders to hold the annual election for directors, all their acts and proceedings while so holding over, done for and in the name of the corporation, designed to charge upon it any lia-

bility or obligation for the services of any such director, or any officer, or attorney or counsel appointed by them, and every such liability or obligation shall be held to be fraudulent and void.

Former section 22 without change.

§ 23. Liability of directors for making unauthorized dividends.—The directors of a stock corporation shall not make dividends, except from the surplus profits arising from the business of such corporation; nor divide, withdraw or in any way pay to the stockholders, or any of them, any part of the capital of such corporation, or reduce its capital stock, except as authorized by law. In case of any violation of the provisions of this section, the directors under whose administration the same may have happened, except those who may have caused their dissent therefrom to be entered at large upon the minutes of such directors at the time, or were not present when the same happened, shall jointly and severally be liable to such corporation and to the creditors thereof to the full amount of the capital of such corporation so divided, withdrawn, paid out or reduced. But this section shall not prevent a division and distribution of the assets of any such corporation remaining after the payment of all its debts and liabilities upon the dissolution of such corporation or the expiration of its charter.

§ 24. Liability of directors for unauthorized debts and over issue of bonds.—No stock corporation, except a monied corporation, shall create any debt, if thereby its total indebtedness not secured by mortgage shall exceed the amount of its paid up capital stock, and the directors creating or consenting to the creation of any such debt shall be personally liable therefor to the creditors of the corporation. If bonds or other obligations of the corporation, secured by mortgage, are issued in excess of the amount authorized by law, or in violation of law, the directors voting for such over issue, or unlawful issue, shall be personally liable to the holders of the bonds or other obligations illegally issued for the amount held by them, and to all persons sustaining damage by such illegal issues for any damage caused thereby.

Former section 24 amended.

§ 25. Liability of directors for loans to stockholders.—No loan of moneys shall be made by any stock corporation, except a monied corporation, or by any officer thereof out of its funds to any stockholder therein, nor shall any such corporation or officer

discount any note or other evidence of debt, or receive the same in payment of any installment or any part thereof due or to become due on any stock in such corporation, or receive or discount any note, or other evidence of debt, to enable any stockholder to withdraw any part of the money paid in by him on his stock. In case of the violation of any provision of this section, the officers or directors making such loan, or assenting thereto, or receiving or discounting such notes or other evidences of debt, shall, jointly and severally, be personally liable to the extent of such loan and interest, for all the debts of the corporation contracted before the repayment of the sum loaned, and to the full amount of the notes or other evidences of debt so received or discounted, with interest from the time such liability accrued.

Former section 25 amended.

§ 26. Transfers of stock by stockholder indebted to corporation.—If a stockholder shall be indebted to the corporation, the directors may refuse to consent to a transfer of his stock until such indebtedness is paid, provided a copy of this section is written or printed upon the certificate of stock.

Former section 26 without change.

§ 27. Officers.—The directors of a stock corporation may appoint from their number a president, and may appoint a secretary, treasurer, and other officers, agents and employes, who shall respectively have such powers and perform such duties in the management of the property and affairs of the corporation, subject to the control of the directors, as may be prescribed by them or in the by-laws. The directors may require any such officer, agent or employe to give security for the faithful performance of his duties, and may remove him at pleasure. The policy holders of an insurance corporation shall be eligible to election or appointment as its officers.

Former section 27 amended.

§ 28. Inspectors and their oath.—The inspectors of election of every stock corporation shall be appointed in the manner prescribed in the by-laws, but the inspectors of the first election of directors and of all previous meetings of the stockholders shall be appointed by the board of directors named in the certificate of incorporation. No director or officer or a monied corporation shall be eligible to election or appointment as inspector. Each inspector shall be entitled to a reasonable compensation for his

services, to be paid by the corporation, and if any inspector shall refuse to serve, or neglect to attend at the election, or his office become vacant, the meeting may appoint an inspector in his place unless the by-laws otherwise provide. The inspectors appointed to act at any meeting of the stockholders shall, before entering upon the discharge of their duties, be sworn to faithfully execute the duties of inspectors at such meeting with strict impartiality, and according to the best of their ability, and the oath so taken shall be subscribed by them, and immediately filed in the office of the clerk of the county in which such election or meeting shall be held, with a certificate of the result of the vote taken thereat.

Former section 28 amended.

§ 29. **Books to be kept.**—Every stock corporation shall keep, at its office, correct books of account of all its business and transactions, and a book to be known as the stock-book, containing the names, alphabetically arranged, of all persons who are stockholders of the corporation, showing their places of residence, the number of shares of stock held by them respectively, the time when they respectively became the owners thereof, and the amount paid thereon. The stock-book of every such corporation shall be open daily, during business hours, for the inspection of its stockholders and judgment creditors, who may make extracts therefrom. No transfer of stock shall be valid as against the corporation, its stockholders and creditors for any purpose, except to render the transferee liable for the debts of the corporation according to the provisions of this chapter, until it shall have been entered in such book as required by this section, by an entry showing from and to whom transferred. Such latter book shall be presumptive evidence of the facts therein so stated in favor of the plaintiff, in any action or proceeding against such corporation or any of its officers, directors or stockholders. Every corporation that shall neglect or refuse to keep or cause to be kept such books, or to keep any book open for inspection as herein required, shall forfeit to the people the sum of fifty dollars for every day it shall so neglect or refuse. If any officer or agent of any such corporation shall willfully neglect or refuse to make any proper entry in such book or books, or shall neglect or refuse to exhibit the same, or allow them to be inspected and extracts taken therefrom as provided in this section, the corporation and such officer or agent shall each forfeit and pay to the party injured a penalty of fifty

dollars for every such neglect or refusal, and all damages resulting to him therefrom.

Former section 29 amended.

§ 30. **Annual report.**—Every stock corporation, except monied and railroad corporations, shall annually, during the month of January, or, if doing business without the United States, before the first day of May, make a report as of the first day of January, which shall state:

1. The amount of its capital stock, and the proportion actually issued.
2. The amount of its debts or an amount which they do not then exceed.
3. The amount of its assets or an amount which its assets at least equal.

Such report shall be signed by a majority of its directors, and verified by the oath of the president or vice-president and treasurer or secretary and filed in the office of the Secretary of State and in the office of the county clerk of the county where its principal business office may be located. If such report is not so made and filed, all the directors of the corporation shall jointly and severally be personally liable for all the debts of the corporation then existing, and for all contracted before such report shall be made. No director shall be liable for the failure to make and file such report if he shall file with the Secretary of State, within thirty days after the first day of February, or the first day of May, as the case may be, a verified certificate, stating that he has endeavored to have such report made and filed, but that the officers or a majority of the directors have refused and neglected to make and file the same, and shall append to such certificate a report containing the items required to be stated in such annual report, so far as they are within his knowledge or are obtainable from sources of information open to him, and verified by him to be true to the best of his knowledge, information and belief.

Former section 30, as amended by laws 1892, chap. 2, further amended.

§ 31. **Liability of Officers for false certificates, reports or public notices.**—If any certificate or report made or public notice given by the officers or directors of a stock corporation shall be false in any material representation, the officers and directors signing the same shall jointly and severally be personally liable to any person who has become a creditor or stockholder of

the corporation upon the faith of any such certificate, report, notice or any material representation therein to the amount of the debt contracted upon the faith thereof if not paid when due, or of the damage sustained by any purchaser of or subscriber to its stock upon the faith thereof. The liability imposed by this section shall exist in all cases where the contents of any such certificate, report or notice or of any material representation therein shall have been communicated either directly or indirectly to the person so becoming a creditor or stockholder and he became such creditor or stockholder upon the faith thereof. No action can be maintained for a cause of action created by this section unless brought within two years from the time the certificate, report or public notice shall have been made or given by the officers or directors of such corporation.

Former section 31 amended.

§ 32. Alteration or extension of business. — Any stock corporation heretofore or hereafter organized under any general or special law of this state may extend or alter its business and powers so as to include any purposes and powers which at the time of such extension may have been conferred by law upon corporations engaged in a business of the same general character, or which might be included in the certificate of incorporation of a corporation organizing under any general law of this state for a business of the same general character by filing in the manner provided for the original certificate of incorporation an amended certificate, executed by a majority of its directors, stating the extension of business and powers and rights proposed, and that the same has been duly authorized by a vote of stockholders representing at least three-fifths of the capital stock, at a meeting of the stockholders called for the purpose in the manner provided in section forty-five of this chapter, and a copy of the proceedings of such meeting, verified by the affidavit of one of the directors present thereat, shall be filed with such amended certificate.

ARTICLE III.

STOCK; STOCKHOLDERS, THEIR RIGHTS AND LIABILITIES.

SECTION 40. Issues and transfers of stocks.

41. Subscriptions to stock.
42. Consideration for issue of stock and bonds.
43. Time of payment of subscriptions to stock.
44. Increase or reduction of capital stock.

- SECTION 45. Notice of meeting to increase or reduce capital stock.
46. Conduct of such meeting; certificate of increase or reduction.
47. Preferred and common stock.
48. Prohibited transfers to officers or stockholders.
49. Payment by stockholders of mortgage debt pending foreclosure.
50. Application to court to order issue of new in place of lost certificate of stock.
51. Order of court upon such application.
52. Financial statement to stockholders.
53. Exhibition of books by transfer agent of foreign corporation.
54. Liabilities of stockholders.
55. Limitation of stockholder's liability.

§ 40. **Issue and transfers of stock.**—The stock of every stock corporation shall be represented by certificates prepared by the directors and signed by the president or vice-president and secretary or treasurer and sealed with the seal of the corporation, and shall be transferable in the manner prescribed in this chapter and in the by-laws. No share shall be transferable until all previous calls thereon shall have been fully paid in.

Any stock corporation, domestic or foreign, now existing or hereafter organized, except monied corporations, may purchase, acquire, hold and dispose of the stocks, bonds and other evidences of indebtedness of any corporation, domestic or foreign, and issue in exchange therefor its stock, bonds or other obligations if authorized so to do by a provision in the certificate of incorporation of such stock corporation, or in any certificate amendatory thereof or supplementary thereto, filed in pursuance of law, or if the corporation whose stock is so purchased, acquired, held or disposed of, is engaged in a business similar to that of such stock corporation, or engaged in the manufacture, use or sale of the property, or in the construction or operation of works necessary or useful in the business of such stock corporation, or in which or in connection with which the manufactured articles, product or property of such stock corporation are or may be used, or is a corporation with which such stock corporation is or may be authorized to consolidate. When any such corporation shall be a stockholder in any other corporation, as herein provided, its president or other officers shall be eligible to the office of director of such corporation, the same as if they were individually stockholders therein, and the corporation holding such stock shall possess and exercise in respect thereof, all the rights, powers and privileges of individual owners or holders of such stock.

Any stock corporation may, in pursuance of a unanimous vote of its stockholders voting at a special meeting called for that purpose by notice in writing signed by a majority of the directors of such corporation stating the time and place and object of the meeting, and served upon each stockholder appearing as such upon the books of the corporation, personally or by mail at his last known post-office address at least sixty days prior to such meeting, guarantee the bonds of any other domestic corporation engaged in the same general line of business.

Former section 40 amended.

§ 41. Subscriptions to stock.—If the whole capital stock shall not have been subscribed at the time of filing the certificate of incorporation, the directors named in the certificate may open books of subscription to fill up the capital stock in such places, and after giving such notices as they may deem expedient, and may continue to receive subscriptions until the whole capital stock is subscribed. At the time of subscribing, every subscriber, whose subscription is payable in money, shall pay to the directors ten per centum upon the amount subscribed by him in cash, and no such subscription shall be received or taken without such payment.

Former section 41 amended.

§ 42. Consideration for issue of stock and bonds.—No corporation shall issue either stock or bonds except for money, labor done or property actually received for the use and lawful purposes of such corporation. No such stock shall be issued for less than its par value.

No such bonds shall be issued for less than the fair market value thereof.

Former section 42 amended.

§ 43. Time of payment of subscriptions to stock.—Subscriptions to the capital stock of a corporation shall be paid at such times and in such installments as the board of directors may by resolution require. If default shall be made in the payment of any installment as required by such resolution, the board may declare the stock and all previous payments thereon forfeited for the use of the corporation, after the expiration of sixty days from the service on the defaulting stockholder, personally or by mail directed to him at his last known post-office address, of a written notice requiring him to make payment within sixty days from the

service of the notice at a place specified therein, and stating that, in case of failure to do so, his stock and all previous payments thereon will be forfeited for the use of the corporation.

Such stock, if forfeited, may be reissued or subscriptions therefor may be received as in the case of stock not issued or subscribed for. If not sold for its par value or subscribed for within six months after such forfeiture, it shall be cancelled and deducted from the amount of the capital stock. If by such cancellation, the amount of the capital stock is reduced below the minimum required by law, the capital stock shall be increased to the required amount within three months thereafter or an action may be brought or proceedings instituted to close up the business of the corporation as in the case of an insolvent corporation. If a receiver of the assets of the corporation has been appointed, all unpaid subscriptions to the stock shall be paid at such times and in such installments as the receiver or the court may direct.

Former section 43 amended.

§ 44. Increase or reduction of capital stock.—Any domestic corporation may increase or reduce its capital stock in the manner herein provided, but not above the maximum or below the minimum amount, if any, prescribed by law. If increased, the holders of the additional stock issued shall be subject to the same liabilities with respect thereto as are provided by law in relation to the original capital; if reduced, the amount of its debts and liabilities shall not exceed the amount of its reduced capital, unless an insurance corporation, in which case the amount of its debts and liabilities shall not exceed the amount of its reduced capital and other assets. The owner of any stock shall not be relieved from any liability existing prior to the reduction of the capital stock of any stock corporation.

Former section 44 amended.

§ 45. Notice of meeting to increase or reduce capital stock.—Every such increase or reduction must be authorized by a vote of the stockholders owning at least two-thirds of the stock of the corporation, taken at a meeting of the stockholders specially called for that purpose. Notice of the meeting, stating the time, place and object, and the amount of the increase or reduction proposed, signed by a majority of the directors, shall be published once a week, for at least two successive weeks, in a newspaper in the county where its principal business office is located,

if any is published therein, and a copy of such notice shall be personally served upon or duly mailed to each stockholder or member at his last known post-office address at least three weeks before the meeting.

Former section 45 amended.

§ 46. Conduct of such meeting; certificate of increase or reduction.—If, at the time and place specified in the notice, the stockholders shall appear in person or by proxy, in numbers representing at least two-thirds of all the shares of stock, they shall organize by choosing from their number a chairman and secretary, and take a vote of those present in person or by proxy, and if a sufficient number of votes shall be given in favor of such increase or reduction, a certificate of the proceedings, showing a compliance with the provisions of this chapter, the amount of capital actually paid in, the whole amount of debts and liabilities of the corporation, and the amount of the increased or reduced capital stock shall be made, signed, verified and acknowledged by the chairman and secretary of the meeting, and filed in the office of the clerk of the county where its principal place of business shall be located, and a duplicate thereof in the office of the Secretary of State. In case of a reduction of the capital stock, except of a railroad corporation, or a monied corporation, such certificate shall have indorsed thereon the approval of the Comptroller, to the effect that the reduced capital is sufficient for the proper purposes of the corporation, and is in excess of its debts and liabilities, and in case of the increase, or reduction of the capital stock of a railroad corporation, or a monied corporation, the certificate shall have indorsed thereon the approval of the board of railroad commissioners, if a railroad corporation; of the superintendent of banks, if a corporation formed under or subject to the banking law; and of the superintendent of insurance, if an insurance corporation.

When the certificate herein provided for has been filed, the capital stock of such corporation shall be increased or reduced, as the case may be, to the amount specified in such certificate. The proceedings of the meeting at which such increase or reduction is voted, shall be entered upon the minutes of the corporation. If the capital stock is reduced, the amount of capital over and above the amount of the reduced capital shall be returned to the stock.

.....

holders pro rata and at such times and in such manner as the directors shall determine.

Former section 46 amended.

§ 47. Preferred and common stock.—Every domestic stock corporation may have preferred and common stock, and different classes of preferred stock, if the certificate of incorporation so provides or by the unanimous consent of the stockholders, and may upon the written request of the holder of any preferred stock, by a two-thirds vote of its directors, exchange the same for common stock, and issue certificates for common stock therefor, share for share, and upon such other valuation as may have been agreed upon in the scheme for the organization of such corporation, or the issue of such preferred stock, but the total amount of such capital stock shall not be increased thereby.

Former section 47 amended.

§ 48. Prohibited transfers to officers or stockholders.—No corporation which shall have refused to pay any of its notes or other obligations when due, in lawful money of the United States, nor any of its officers or directors, shall transfer any of its property to any of its officers, directors or stockholders, directly or indirectly, for the payment of any debt, or upon any other consideration than the full value of the property paid in cash. No conveyance, assignment or transfer of any property of any such corporation by it or by any officer, director or stockholder thereof, nor any payment made, judgment suffered, lien created or security given by it or by any officer, director or stockholder when the corporation is insolvent or its insolvency is imminent, with the intent of giving a preference to any particular creditor over other creditors of the corporation shall be valid.

Every person receiving by means of any such prohibited act or deed any property of the corporation shall be bound to account therefor to its creditors or stockholders or other trustees.

No stockholder of any such corporation shall make any transfer or assignment of his stock therein to any person in contemplation of its insolvency. Every transfer or assignment or other act done in violation of the foregoing provisions of this section shall be void.

No conveyance, assignment or transfer of any property of a corporation formed under or subject to the banking law, exceeding in value one thousand dollars shall be made by such corpora-

tion, or by any officer or director thereof, unless authorized by a previous resolution of its board of directors, except promissory notes or other evidences of debt issued or received by the officers of the corporation in the transaction of its ordinary business and except payments in specie or other current money or in bank bills made by such officers. No such conveyance, assignment or transfer shall be void in the hands of a purchaser for a valuable consideration without notice.

Every director or officer of a corporation who shall violate or be concerned in violating any provision of this section, shall be personally liable to the creditors and stockholders of the corporation of which he shall be director or an officer to the full extent of any loss they may respectfully sustain by such violation.

Former section 48 amended.

§ 49. Payment by stockholders of mortgage debt pending foreclosure.—Whenever default shall be made by any corporation in the payment of principal or interest of any of its bonds secured by mortgage or deed of trust of its property, any stockholder may at any time during the pendency of the foreclosure of such mortgage or deed of trust and before the sale thereunder pay to the mortgagees or grantees in such mortgage or deed, for the use and benefit of the holders of such bonds, a sum equal to such proportion of the amount due and secured to be paid by such mortgage or deed, as his stock in such corporation shall bear to its whole capital stock, and on making such payment he shall to the extent thereof become and be interested in such mortgage or deed protected thereby.

Former section 49 without change.

§ 50. Application to court to order issue of new in place of lost certificate of stock.—The owner of a lost or destroyed certificate of stock, if the corporation shall refuse to issue a new certificate in place thereof, may apply to the supreme court, at any special term held in the district where he resides, or in which the principal business office of the corporation is located, for an order requiring the corporation to show cause why it should not be required to issue a new certificate in place of the one lost or destroyed. The application shall be by petition, duly verified by the owner, stating the name of the corporation, the number and date of the certificate, if known, or if it can be ascertained by the petitioner; the number of shares named therein, to

whom issued, and as particular a statement of the circumstances attending such loss or destruction as the petitioner can give. Upon the presentation of the petition the court shall make an order requiring the corporation to show cause, at a time and place therein mentioned, why it should not issue a new certificate of stock in place of the one described in the petition. A copy of the petition and order shall be served on the president or other head of the corporation, or on the secretary or treasurer thereof, personally, at least ten days before the time for showing cause.

Former section 50 amended.

§ 51. Order of court upon such application.—Upon the return of the order, with proof of due service thereof, the court shall, in a summary manner, and in such mode as it may deem advisable, inquire into the truth of the facts stated in the petition, and hear the proofs and allegations of the parties in regard thereto, and if satisfied that the petitioner is the lawful owner of the number of shares, or any part thereof, described in the petition, and that the certificate therefor has been lost or destroyed, and cannot after due diligence be found, and that no sufficient cause has been shown why a new certificate should not be issued, it shall make an order requiring the corporation, within such time as shall be therein designated, to issue and deliver to the petitioner a new certificate for the number of shares specified in the order, upon depositing such security, or filing a bond in such form and with such sureties as to the court shall appear sufficient to indemnify any person other than the petitioner who shall thereafter be found to be the lawful owner of the certificate lost or destroyed; and the court may direct the publication of such notice, either before or after making such order as it shall deem proper. Any person claiming any rights under the certificates alleged to have been lost or destroyed shall have recourse to such indemnity, and the corporation shall be discharged from all liability to such person upon compliance with such order; and obedience to the order may be enforced by attachment against the officer or officers of the corporation on proof of his or their refusal to comply with it.

Former section 51 without change.

§ 52. Financial statement to stockholders.—Stockholders owning five per centum of the capital stock of any corporation other than a monied corporation, not exceeding one hundred

thousand dollars, or three per centum where it exceeds one hundred thousand dollars, may make a written request to the treasurer or chief fiscal officer thereof, for a statement of its affairs, under oath, embracing a particular account of all its assets and liabilities, and the treasurer shall make such statement and deliver it to the person presenting the request within thirty days thereafter, and keep on file for twelve months thereafter a copy of such statement, which shall at all times during business hours be exhibited to any stockholder demanding an examination thereof; but the treasurer or such chief fiscal officer shall not be required to deliver more than one such statement in any one year. The supreme court, or any justice thereof, may upon application, for good cause shown, extend the time for making and delivering such certificate. For every neglect or refusal of the treasurer or other chief fiscal officer thereof to comply with the provisions of this section he shall forfeit and pay to the person making such request the sum of fifty dollars, and the further sum of ten dollars for every twenty-four hours thereafter until such statement shall be furnished.

Former section 52 amended.

§ 53. Exhibition of books by transfer agent of foreign corporation.—The transfer agent in this state of any foreign corporation, whether such agent shall be a corporation or a natural person, shall, at all times during the usual hours of transacting business, exhibit to any stockholder of such corporation, when required by him, the transfer book, and a list of the stockholders thereof, if in his power to do so, and for every violation of the provisions of this section, such agent, or any officer or clerk of such agent, shall forfeit the sum of two hundred and fifty dollars, to be recovered by the person to whom such refusal was made.

Former section 56.

§ 54. Liabilities of stockholders.—The stockholders of every stock corporation shall, jointly and severally, be personally liable to its creditors, to an amount equal to the amount of the stock held by them respectively, for every debt of the corporation, until the whole amount of its capital stock issued and outstanding at the time of such debt was incurred shall have been fully paid. The stockholders of every stock corporation shall, jointly and severally be personally liable for all debts due and owing to any of its laborers, servants or employees other than contractors, for

services performed by them for such corporation. Before such laborer, servant or employee shall charge such stockholder for such services, he shall give him notice in writing, within thirty days after the termination of such services that he intends to hold him liable, and shall commence an action therefor within thirty days after the return of an execution unsatisfied against the corporation upon a judgment recovered against it for services. No person holding stock in any corporation as collateral security, or as executor, administrator, guardian or trustee, unless he shall have voluntarily invested the trust funds in such stock, shall be personally subject to liability as a stockholder; but the person pledging such stock shall be considered the holder thereof, and shall be liable as stockholder; and the estates and funds in the hands of such executor, administrator, guardian or trustee shall be liable in the like manner and to the same extent as the testator or intestate, or the ward, or person interested in such trust fund would have been, if he had been living and competent to act and held the same stock in his own name, unless it appears that such executor, administrator, guardian or trustee, voluntarily invested the trust fund in such stocks, in which case he shall be personally liable as a stockholder.

Former section 57.

§ 55. Limitation of stockholder's liability. — No action shall be brought against a stockholder for any debt of the corporation until judgment therefor has been recovered against the corporation, and an execution thereon has been returned unsatisfied in whole or in part, and the amount due on such execution shall be the amount recoverable, with costs against the stockholder. No stockholder shall be personally liable for any debt of the corporation not payable within two years from the time it is contracted, nor unless an action for its collection shall be brought against the corporation within two years after the debt becomes due; and no action shall be brought against a stockholder after he shall have ceased to be a stockholder, for any debt of the corporation, unless brought within two years from the time he shall have ceased to be a stockholder.

TABLE B, showing the derivation of the General Corporation Law,
Laws of 1890, Chapter 563.

Sec.	Based upon Laws of	Chap.	Secs.	Sec.	Based upon Laws of	Chap.	Secs.
1	1875.....	611	4.		1873.....	616	4.
	1881.....	22	1.		1874.....	143	7, 15.
4	1875.....	611	4.		1874.....	288	2, 3.
5	1870.....	135	1, 2.		1875.....	267	5, 10.
	1881.....	468	11.		1875.....	343	8.
6	1888.....	306	1, 2.		1875.....	611	2.
7	1811.....	67	8.		1877.....	228	6.
	1847.....	210	3.		1882.....	273	3.
	1848.....	37	9.		1884.....	367	4.
	1867.....	974	3.		1886.....	236	8.
	1848. . .	40	9.		1888.....	293	7.
	1848.....	259	4.		1888.....	891	5.
	1848.....	265	3.	9	3 R. S. (8th ed.),	p. 1723-4.	2
	1850.....	140	3.	10	1882,...	290	1.
	1853.....	117	9.	11	1872.....	146	1.
	1853.....	135	11.	12	1887.....	450	1.
	1854.....	112	3.	13	1877.....	158	1.
	1854.....	232	9.	14	3 R. S. (8th ed.),	p. 1723-4.	4
	1857.....	546	9.	15	3 R. S. (8th ed.),	p. 1729-30.	5
	1861.....	149	4.	16	1885.....	489	2.
	1869.....	917		17	3 R. S. (8th ed.),	p. 1723-4.	6
	1872.....	820	16.	18	1796....	43	10.
	1873.....	469	5.		1811.....	67	4, 10.
	1874.....	143	9.		1848....	37	4.
	1875. . .	469	5.		1848.....	40	4.
	1878.....	203	3.		1848.....	319	4.
	1885.....	505	4.		1853.....	117	4.
	1888.....	462	2.		1853.....	135	5.
8	3 R. S. (8th ed.),	p. 1723.	4		1854.....	232	4, 5.
	3 R. S. (8th ed.),	p. 1729.			1857.....	546	4.
		1730	6.		1872.....	820	12.
	1811.....	67	6.		1873.....	397	4.
	1848.....	37	7, 23.		1874.....	143	4.
	1848.....	40	7, 26.		1875. . .	267	5.
	1867.....	960	4.		1875.....	611	27.
	1848.....	265	4, 6.		1886.....	236	6.
	1848.....	319	9.		1887.....	317	6.
	1853.....	117	7, 26.		1887.....	501	3.
	1854.....	232	7, 26.		1888.....	293	4.
	1854.....	269	4, 6.	19	3 R. S. (8th ed.),	p. 1723-4.	9
	1857.....	546	2, 7.	20	3 R. S. (8th ed.),	p. 1723-4.	10
	1857.....	776	6, 8.	21	3 R. S. (8th ed.),	p. 1723-4.	7
	1859.....	168	13.	22	1866.....	697	5.
	1862.....	438	3.		1867.....	987	1.
	1867.....	971	6.		1875.....	58	1.
	1872.....	248	11.		1875.....	611	29.
	1872.....	820	18.		1857....	29	2.
	1873.....	397	8.				

III. THE STATUTORY CONSTRUCTION LAW; LAWS OF 1892, CHAPTER 677.

CHAPTER I OF THE GENERAL LAWS.

- SECTION 1. Short title; extent of application.
2. Property.
 3. Real property.
 4. Personal property.
 5. Person.
 6. Judge.
 7. Lunacy; idiocy.
 8. Gender; number; tense.
 9. Heretofore; hereafter; now.
 10. Last; preceding; next; following
 11. Folio.
 12. Writing; signature.
 13. Seal.
 14. Oath; affidavit; swear.
 15. Acknowledge; acknowledgment.
 16. Bond; undertaking.
 17. Choose; elect; appoint.
 18. Board composed of one person.
 19. Meeting; quorum; powers of majority.
 20. Service of notice upon board or body.
 21. County clerk; register.
 22. Village.
 23. State.
 24. Public holiday; half-holiday.
 25. Year.
 26. Month.
 27. Day; mode of computing days; night-time.
 28. Standard time.
 29. Civil and criminal codes.
 30. Laws of England and of the colony of New York.
 31. Limiting the effect of repealing statutes.
 32. Existing laws included in revision not to be construed as new enactments.
 33. Effect of revision upon laws passed at same session or before revision takes effect.
 34. Alterations of titles and head notes.
 35. Laws repealed.
 36. Time of taking effect.

SECTION 1. **Short title; extent of application.**—This chapter shall be known as the statutory construction law, and is applicable to every statute unless its general object, or the context of the language construed, or other provisions of law indicate that a

different meaning or application was intended from that required to be given by this chapter.

§ 2. **Property.**—The term property includes real and personal property.

§ 3. **Real property.**—The term real property includes real estate, lands, tenements and hereditaments, corporeal and incorporeal.

§ 4. **Personal property.**—The term personal property includes chattels, money, things in action, and all written instruments themselves, as distinguished from the rights or interests to which they relate, by which any right, interest, lien or incumbrance in, to or upon property, or any debt or financial obligation is created, acknowledged, evidenced, transferred, discharged or defeated, wholly or in part, and everything, except real property, which may be the subject of ownership. The term chattels includes goods and chattels.

§ 5. **Person.**—The term person includes a corporation and a joint stock association. When used to designate a party whose property may be the subject of any offense, the term person also includes the state, or any other state, government or country which may lawfully own property in the state.

§ 6. **Judge.**—The term judge includes every judicial officer authorized, alone or with others, to hold or preside over a court of record.

§ 7. **Lunacy ; idiocy.**—The terms lunatic and lunacy include every kind of unsoundness of mind except idiocy.

§ 8. **Gender ; number ; tense.**—Words of the masculine gender include the feminine and the neuter, and may refer to a corporation, or to a board or other body or assemblage of persons ; and, when the sense so indicates, words of the neuter gender may refer to any gender. The term men includes boys and the term women includes girls.

Words in the singular number include the plural, and in the plural number include the singular.

Words in the present tense include the future.

§ 9. **Heretofore ; hereafter ; now.**—Each of the terms, heretofore, and hereafter, in any provision of a statute, relates to the time such provision takes effect. The term now in any provision of a statute referring to other laws in force, or to persons in office, or to any facts or circumstances as existing, relates to the laws in force, or the person in office, or to the facts or circumstances ex-

isting, respectively, immediately before the taking effect of such provision.

§ 10. **Last ; preceding ; next ; following.**—A reference to the last or preceding section, or other provision of a statute, means the section or other division immediately preceding, and a reference to the next or following section or other division of a statute means the section or other division immediately following.

§ 11. **Folio.**—A folio is one hundred words, counting as a word each figure necessarily used.

§ 12. **Writing ; signature.**—The terms writing and written include every legible representation of letters upon a material substance, except when applied to the signature of an instrument. The term signature includes any memorandum, mark or sign, written or placed upon any instrument or writing with intent to execute or authenticate such instrument or writing.

§ 13. **Seal.**—The private seal of a person, other than a corporation, to any instrument or writing shall consist of a wafer, wax or other similar adhesive substance affixed thereto, or of paper or other similar substance affixed thereto, by mucilage or other adhesive substance, or of the word "seal," or the letters "L. S.," opposite the signature.

A seal of a court, public officer or corporation may be impressed directly upon the instrument or writing to be sealed, or upon wafer, wax or other adhesive substance affixed thereto, or upon paper or other similar substance affixed thereto by mucilage or other adhesive substance. An instrument or writing duly executed, in the corporate name of a corporation, which shall not have adopted a corporate seal, by the proper officers of the corporation under their private seals, shall be deemed to have been executed under the corporate seal.

§ 14. **Oath ; affidavit ; swear.**—The terms oath and affidavit include every mode authorized by law of attesting the truth of that which is stated.

The term swear includes every mode authorized by law for administering an oath. When an affidavit is authorized or required it may be sworn to before any officer authorized by law to take the acknowledgment of deeds in this state, unless a particular officer is specified before whom it is to be taken.

§ 15. **Acknowledge ; acknowledgment.**—When the execution of any instrument or writing is authorized or required by law to be acknowledged, or to be proven so as to entitle it to be filed

or recorded in a public office, the acknowledgment may be taken or the proof made before any officer then and there authorized to take the acknowledgment or proof of the execution of a deed of real property to entitle it to be recorded in a county clerk's office, and shall be made and certified in the same manner as such acknowledgment or proof of such deed.

The term acknowledge and acknowledgment, when used with reference to the execution of an instrument or writing other than a deed of real property, includes a compliance with the provisions of this section by either such proof or acknowledgment.

§ 16. **Bonds ; undertaking.**—A provision of law authorizing or requiring a bond to be given shall be deemed to have been complied with by the execution of an undertaking to the same effect.

§ 17. **Choose ; elect ; appoint.**—The term choose includes elect and appoint.

§ 18. **Board composed of one person.**—A reference to several officers of a municipal corporation holding the same office, or to a board of such officers, shall be deemed to refer to the single officer holding such office, when but one person is chosen to fill such office in pursuance of law.

§ 19. **Meeting ; quorum ; powers of majority.**—Whenever three or more public officers are given any power or authority, or three or more persons are charged with any public duty to be performed or exercised by them jointly or as a board or similar body, a majority of all such persons or officers at a meeting duly held at a time fixed by law, or by any by-law duly adopted by such board or body, or at any duly adjourned meeting of such meeting, or at any meeting duly held upon reasonable notice to all of them, may perform and exercise such power, authority or duty, and if one or more of such persons or officers shall have died or have become mentally incapable of acting, or shall refuse or neglect to attend any such meeting, a majority or the whole number of such persons or officers shall be a quorum of such board or body, and a majority of a quorum, if not less than a majority of the whole number of such persons or officers, may perform and exercise any such power, authority or duty. Any such meeting may be adjourned by a less number than a quorum. A recital in any order, resolution, or other record of any proceeding of such a meeting that such meeting had been so held or adjourned, or that it had been held upon such notice to the members, shall be presumptive evidence thereof.

§ 20. **Service of notice upon body or board.**—When a notice is required to be given to a board or body, service of such notice upon the clerk or chairman thereof shall be sufficient.

§ 21. **County clerk ; register.**—Any act done in pursuance of law by the register of a county shall be deemed to be a compliance with any provision of law authorizing or requiring such act to be done by the county clerk of such county, and any instrument or writing filed, entered or recorded in pursuance of law in the office of a register of a county, shall be deemed to be a compliance with any provision of law authorizing or requiring such paper to be filed, entered or recorded, as the case may be, in the office of the clerk of such county.

§ 22. **Village.**—The term village means an incorporated village.

§ 23. **State; territory.**—The term state, when used generally to include every state of the United States, includes also every territory of the United States and the District of Columbia. The term territory when used generally to include every territory of the United States, includes also the District of Columbia.

§ 24. **Public holiday ; half-holiday.**—The term holiday includes the following days in each year: The first day of January, known as New Year's day; the twenty-second day of February, known as Washington's birthday; the thirtieth day of May, known as memorial day; the fourth day of July, known as independence day; the first Monday of September, known as labor day, and the twenty-fifth day of December, known as Christmas day, and if either of such days is Sunday, the next day thereafter; each general election day and each day appointed by the president of the United States or by the governor of this state as a day of general thanksgiving, general fasting and prayer, or other general religious observance.

The term half holiday includes the period from noon to midnight of each Saturday which is not a holiday.

§ 25. **Year.**—Time shall continue to be computed in this state according to the Gregorian or new style. The first day of each year after the year 1752 is the first day of January, according to such style. For the purpose of computing and reckoning the days of the year in the same regular course in the future, every year, the number of which in the Christian era is a multiple of four, is a bisextile or leap year consisting of three hundred and sixty-six days, unless such number of the year is a multiple of one hun-

dred and the first two figures thereof treated as a separate number is not a multiple of four, and every year which is not a leap year is a common year consisting of three hundred and sixty-five days.

The term year in a statute, contract, or any public or private instrument, means three hundred and sixty-five days, but the added day of a leap year and the day immediately preceding shall for the purpose of such computation be counted as one day.

In a statute, contract or public or private instrument, the term year means twelve months, the term half-year six months, and the term a quarter of a year, three months.

§ 26. **Month.**—In a statute, contract or public or private instrument, unless otherwise provided in such contract or instrument or by law, the term month means a calendar month and not a lunar month. A number of months after or before a certain day shall be computed by counting such number of calendar months from such day, exclusive of the calendar month in which such day occurs, and shall include the day of the month in the last month so counted having the same numerical order in days of the month as the day from which the computation is made, unless there be not so many days in the last month so counted, in which case the period computed shall expire with the last day of the month so counted.

§ 27. **Day ; mode of computing days ; night-time.**—A calendar day includes the time from midnight to midnight. Sunday or any day of the week specifically mentioned means a calendar day. A number of days specified as a period from a certain day within which or after or before which an act is authorized or required to be done means such number of calendar days exclusive of the calendar day from which the reckoning is made. Sunday or a public holiday other than a half-holiday must be excluded from the reckoning if it is the last day or an intervening day of any such period of two days. In computing any specified number of days, weeks or months from a specified event, the day upon which the event happens is deemed the day from which the reckoning is made. The day from which any specified number of days, weeks or months of time is reckoned shall be excluded in making the reckoning.

Night-time includes the time from sunset to sunrise.

§ 28. **Standard time.**—The standard time throughout this state is that of the seventy-fifth meridian of longitude west from Greenwich, and all courts and public officers, and legal and official

proceedings, shall be regulated thereby. Any act required by or in pursuance of law to be performed at or within a prescribed time, shall be performed according to such standard time.

§ 29. **Civil and Criminal Codes.**—The term Civil Code means the Code of Civil Procedure. The term Criminal Code means the Code of Criminal Procedure.

§ 30. **Laws of England and of the colony of New York.**—A statute of England or Great Britain shall not be deemed to have had any force or effect in this state since May 1, 1788. Acts of the legislature of the colony of New York shall not be deemed to have had any force or effect in this state since December 29, 1828.

The resolutions of the congress of such colony and of the convention of the state of New York, shall not be deemed to be the laws of this state hereafter.

§ 31. **Limiting the effect of repealing statutes.**—The repeal hereafter or by this chapter of any provision of a statute, which repeals any provision of a prior statute, does not revive such prior provision. The repeal hereafter or by this chapter of any provision of a statute, which amends a provision of a prior statute, leaves such prior provision in force unless the amendatory statute be a substantial re-enactment of the statute amended. The repeal of a statute or part thereof shall not affect or impair any act done or right accruing, accrued or acquired, or liability, penalty, forfeiture or punishment incurred prior to the time such repeal takes effect, but the same may be asserted, enforced, prosecuted or inflicted, as fully and to the same extent as if such repeal had not been effected; and all actions and proceedings, civil or criminal, commenced under or by virtue of any provision of a statute so repealed, and pending immediately prior to the taking effect of such repeal, may be prosecuted and defended to final effect in the same manner as they might if such provisions were not so repealed.

§ 32. **Existing laws included in revision not to be construed as new enactments.**—The provisions of any chapter of the revision of the general laws of which this chapter is a part, so far as they are substantially the same as those of laws existing at the time such chapter takes effect, shall be construed as a continuation of such laws, modified or amended according to the language employed in such provisions, and not as new enactments. References in laws not repealed to provisions of law which are incor-

porated into any such chapter and repealed shall be construed as applying to the provisions so incorporated.

§ 33. **Effect of revision upon laws passed at same session or before revision takes effect.**—No provision of any chapter of the revision of the general laws, of which this chapter is a part, shall supersede or repeal by implication any law passed at the same session of the legislature at which any such chapter was enacted, or passed after the enactment of any such chapter and before it shall have taken effect; and an amendatory law passed at such session or at any subsequent session begun before any such chapter takes effect, shall not be deemed repealed, unless specifically designated in the repealing schedule of such chapter.

§ 34. **Alterations of titles and head notes.**—If the title of any article or other division of a statute, or the head note of a section shall be amended or repealed in the body of the statute, or if a new article or other division having a title, or a new section having a new head note be added to a statute, the corresponding title or head note, if any, in an abstract of contents at the beginning of the article or other division of the statute shall be deemed to be correspondingly amended or repealed, although there be no express reference thereto.

§ 35. **Laws repealed.**—Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is repealed.

§ 36. **Time of taking effect.**—This chapter shall take effect immediately.

SCHEDULE OF LAWS REPEALED.

	Sections repealed.	In revision sections.
Revised Statutes, part I, chapter 8, title 8.....	16	13
Revised Statutes, part I, chapter 19, title 1.....	1, 2, 3, 4, 5.....	23, 24, 26
Revised Statutes, part II, chapter 4, title 2	3	5
Revised Statutes, part II, chapter 4, title 3	9	24
Revised Statutes, part III, chapter 8, title 17	27	16
Revised Statutes, part III, chapter 10, title 4	4	11
Revised Statutes, part IV, chapter 2, title 8	16	13
Laws 1828, second meeting, 51st session, chapter 20	9, 10, 11	8, 9
Laws 1828, second meeting, 51st session, chapter 21	3 and 4	27
Laws 1857, chapter 536.....	3	5
Laws 1874, chapter 321.....	All	18
Laws 1877, chapter 466.....	27	8
Laws 1884, chapter 14	All	26
Laws 1886, chapter 21	20	16
Code of Civil Procedure	29, 788, 960 and subdivisions 6, 7, 8, 15, 17, 21, 22, 23 and 24 of section 3343.....	13, 25, 3, 4, 2, 7, 21, 22, 20, 12, 11
Code of Criminal Procedure ...	955, 956, 957	18, 12, 14
Penal Code	261, 500, and subdivisions 9, 10, 11, 12, 13, 14 and 15 of section 718.	25, 2, 8, 5, 3, and 4

Notes of Decisions Upon Corporations.

	PAGE
SECTION 1. Rights and duties of corporations ..	139
2. Filing certificate of incorporation.....	142
3. Right to protection of name.....	142
4. Rights and duties of directors.....	142
5. Stocks defined.....	143
6. Stockholder; how constituted.....	143
7. Dividends; declaration of.....	143
8. Call; when necessary	143
8a. Borrower of stock, when empowered to use it.....	143
9. Actions in relation to stock.....	144
10. Action to establish liability of stockholder.....	144
11. Subscription for stock	144
12. Overissue of stock.....	144
13. Shares of stock non-negotiable.	144
14. Purchaser of stock takes it subject to burdens ..	145
15. Increase and reduction of capital stock.	145
16. Transfer of stock.....	145
17. Gift of stock; how consummated.....	145
18. Subscriptions obtained by fraud	145
19. Capital stock is a trust fund for creditors.....	145
20. Offer of corporation to sell stock below par is fraudulent ...	146
21. Shareholder defined.....	146
22. When stockholder may vote when personal interest involved. 146	
23. Shares are personal property	146
24. Corporation need not recognize over-issue of stock.....	146
25. Shareholders are bound by acts of a majority	14
26. Corporation cannot ratify certain <i>ultra vires</i> acts	146
27. Corporation not responsible for tortious acts of shareholders..	146
28. Mortgage of corporate property.....	147
29. Actions against corporations.....	147
30. Dissolution and forfeiture of corporations	147
31. By-laws.....	148
32. Service of process upon corporation.....	148
33. Corporate lien upon shares	148
34. Miscellaneous subjects.....	149

§ 1. RIGHTS AND DUTIES OF CORPORATIONS.

While express words of incorporation are not essential to create a corporation, but one may arise without such words out of the general language of a statute if a corporation be necessary to accomplish the purpose of the act; yet, where no such necessity exists, a corporation is not created by implication. *Walsh v. Trustees*, 96 N. Y., 427. See 126 *id.*, 29. As to establishment by user, see 31 N. Y. St. R., 916.

Where an ineffectual attempt is made to consolidate several corporations into one, and the new association undertakes the control and management of a railway property, the separate constituent companies retain their individual entity and remain actors and participators in the association, and severally liable as wrongdoers for negligence in the management of such property. *Latham v. Boston, H. T., etc., Ry. Co.*, 38 Hun, 265,

A corporation can act only in the mode and within the limitations prescribed by the law creating it. *Bank of N. Y. v. Bank of Newark*, 89 N. Y., 467.

A corporation cannot become surety on a lease to another. *Filon v. Brewing Co.*, 38 N. Y. St. R., 602. See *Cook, Stocks & Stockh.* Secs. 677, 679. See as to indorsement of note, 25 N. Y. St. R., 864; 26 id., 58; 30 id., 289; 116 N. Y., 281; 119 id., 256; 56 Hun, 136.

The power to make and agree upon articles of association under the general railroad law (L. 1850, ch. 140, sec. 3) cannot be delegated to an agent or attorney; but the mere act of signing the articles, after the terms have been agreed upon, by and under the direction of the proper incorporators, may be performed by an agent. *N. Y., L., etc., Ry. Co. v. U. S. Co.*, 35 Hun, 220.

When no power, authority or franchise is conferred by the legislature on a corporation, but the act only prescribes the proceedings by which such rights can be acquired, a substantial compliance with the material requirements of the act is a condition precedent, without performance of which it never becomes legally incorporated or acquires any rights under the act. *Matter of N. Y. Cable Co.*, 104 N. Y., 1.

Unless restrained by law, every corporation has the incidental power to make any contract necessary to advance the objects for which it was created. *Legrand v. M. M. Asso.*, 80 N. Y., 638. But no powers other than those granted or necessary to execute its objects. 15 Johns., 358; 3 N. Y., 430.

A corporation, although created but for a limited period, may acquire title in fee to lands necessary for its use. A deed to a railroad company which is incorporated for a term of fifty years, granting lands to it and its successors, conveys an estate in fee, if the grantor had such an estate, and where in such conveyance the land was granted on the condition that the road should be constructed within a limited time, *held*, that the condition was subsequent, and that title to the land vested in the corporation on the execution of the deed. A mere failure to perform such a condition does not divest the title. *Nicoll v. N. Y. & E. Ry. Co.*, 12 N. Y., 121; 111 id., 38.

A corporation is bound by an implied contract in the same manner as an individual to pay for services which were valuable to him, and rendered under such circumstances as to show that the parties intended and understood that they were to be paid for. *Fitzgerald & M. Const. Co. v. Fitzgerald*, 137 U. S., 98.

The charter of a railroad company granted in Illinois forbid the sale of its bonds below par, but where such bonds were issued and sold in New York below par, *Held*, that the sale was not illegal by New York laws, and the charter could have no effect here except as to restrictions upon the power of the corporation or its officers. *Ellsworth v. St. Louis, A., etc., Ry. Co.*, 98 N. Y., 553; 123 id., 108. See 8 N. Y. S., 867.

A railroad company may agree to pay for rights of way in bonds. *Munson v. S. G. & C. Ry. Co.*, 103 N. Y., 58. See 82 id., 535.

The purchase of stock in another corporation by a railroad is *ultra vires*—such act not being necessary to the exercise of any of its corporate powers. *Milbank v. N. Y., L. E. & W. Ry. Co.*, 64 How. Pr., 20. See 4 St. R., 541; 95 N. Y., 115; *Cook, Stocks & Stockh.* (2d ed.), § 815.

Bonds of a railroad company issued to its president, but not a stockholder, in pursuance of a resolution of the executive committee of its directors of which he was a member, for money loaned it by him in good faith to promote its interests, are valid, especially when the resolution was afterwards ratified by the board of directors. *Duncomb v. N. Y., H., etc., Ry. Co.*, 88 N. Y., 1. See 37 N. Y., 317; 40 Hun, 150.

Where a part payment for real estate was to be made when a contemplated organization was effected, *Held*, that the organization of the corporation was not the event which established, but only fixed the time when the payment of such indebtedness might be exacted, and that such corporation was formed in contemplation of the contract, when such acts were done among the associates as would form and set on foot, in practical existence, a body in which they would have rights, and to which they would owe obligations, although no statutory organization had been perfected. *Childs v. Smith*, 46 N. Y., 34; reversing 55 Barb., 45; 38 How. Pr., 328; see 38 St. R., 462.

As to right of corporation to receive dividends on stocks, but not to vote thereon, see *Milbank v. N. Y., L. E., etc., Ry. Co.*, 64 How. Pr., 20.

The amendment to articles of association contemplated by L., 1870, c, 135, applies only to *patent* omissions. *Re. N. Y., L. & W. Ry. Co.*, 25 Hun, 556.

A Corporation created by the Laws of the United States. *Held*, a foreign corporation (Code Civ. P., sec. 3343, sub. 18), and its domicile is where its principal office is located. *Rosenbaum v. U. P. Ry. Co.*, 2 How. Pr., 45. See *Abb. N. C.*, 226.

A seal affixed to a corporate contract makes it a specialty, the same as when a seal is affixed to an individual contract. *Clark v. Woollen Co.*, 15 Wend., 256; 15 id., 266. See further as to use of a seal to corporate contract. *Whitford v. Laidler*, 94 N. Y., 145; 110 N. Y., 50. See 12 Civ. Pro., 235; 16 St. R., 905.

A conveyance of real property by a corporation, in the absence of proof to the contrary, will be presumed to have been made in pursuance of its powers, if it have power to hold and convey real estate, under any circumstances. *Farmers' L. & T. Co. v. Curtis*, 7 N. Y., 466. See 53 Super. Ct., 367; 88 N. Y., 660. The right to borrow money is an incident of its charter. 7 N. Y., 466. See 100 U. S., 55.

A transfer by trustees of a corporation of all its property to another corporation in settlement of a claim, though it be deemed *ultra vires*, is not void, but voidable, and may be ratified by the stockholders by acquiescence, with knowledge thereof. *Sheldon H. B. Co. v. Eickemeyer H. B. Co.*, 90 N. Y., 607. See 56 Hun, 437.

A corporation has no power to take and hold property to any limit against every one except the State. The right of a corporation to take and hold property is limited by its charter or the statute under which it was organized. *Matter of McGraw*, 45 Hun, 354; *aff'd* 111 N. Y., 66; 136 U. S., 152.

A contract purporting to be made by a corporation within its powers, signed by the president and sealed by him with the corporate seal, is binding

upon the corporation until impeached by contrary evidence. *N. E. Iron Co. v. Gilbert El. Ry. Co.*, 91 N. Y., 153.

A contract between a trustee of a corporation for his services to it, at a meeting at which his presence and vote were necessary to secure such contract, is illegal, and an action thereon cannot be sustained. *Copeland v. Manuf. Co.*, 47 Hun, 235. See as to compensation of officers of corporations, 37 N. Y., 317; 38 id., 201; 12 N. Y. St. Rep., 877; 103 N. Y., 190. 2 T. & C., 653; 48 Hun, 554; 41 id., 109; 103 N. Y., 58; 50 Hun, 957; 118 N. Y., 484, 633.

As to lease of railroad between companies having common directory; when void. See *Barr v. N. Y., L. E. & W. Ry. Co.*, 52 Hun, 555.

A corporation for business purposes, having in view pecuniary gain and profit to its projectors, does not come within the purview of the act for incorporation of benevolent societies (L. 1848, c. 319), except for some or one of the purposes therein named, although it may contemplate the promotion of the temporal interests of others. (See 35 Minn., 459.) *People ex rel. v. Nelson*, 46 N. Y., 477; rev'g 11 Abb. Pr. N. S., 106.

§ 2. FILING CERTIFICATE OF INCORPORATION.

The right to file a certificate with the Secretary of State, by which a body politic and corporate is to be, *ipso facto* created, only exists in behalf of those who bring themselves within the law. 46 N. Y., 477. See as to approval of Comptroller, 36 Hun, 488; aff'd 100 N. Y., 641.

Where a new company is formed out of an old one, but with an increased capital stock. *Held*, that the Secretary of State could not be compelled to file their articles of association until a tax of one-eighth of one per cent of the stock was paid in. *Peo. ex rel. v. Cook*, 18 N. Y. St. Rep., 650. As to tax on organization of corporations, See 57 Hun, 486.

§ 3. RIGHT TO PROTECTION OF NAME.

The right to protection of name is a proprietary one, and injunction will issue to prevent the illegal use thereof by another. In such case neither guilty knowledge nor fraudulent intent on the part of the wrong doer need be shown. *Am. Grocer v. Grocer*, 25 Hun, 888. See also 101 U. S., 51; 2 Sandf., 599, 616, 618; 1 H. & M., 447; 82 N. Y., 519; 62 id., 427; 122 id., 65; 70 id., 573; 121 id., 484; 5 S. W. 29; 1 N. Y. S., 44; 7 St. R., 871; 2 N. Y. S., 296; 31 id., 44; S. C., 18 N. Y. St. R., 151; 22 id., 494; S. C., 4 N. Y. S., 916; 115 N. Y., 176; 24 Abb. N. C., 368. **Change of name**, *Re Bank of Attica*, 12 N. Y. State Rep., 648; 115 N. Y., 176.

§ 4. RIGHTS AND DUTIES OF DIRECTORS.

Trustees must have actual notice of the meetings of corporations. *Peo. ex rel. v. Albany Med. Coll.*, 26 Hun, 348. Acts of a majority of a corporation to be effectual must have been expressed at a regular notified meeting at which all the directors might have been present. *Elliott v. Abbott*, 12 N. H., 549; 12 id., 205; *Morawetz on Corp.*, § 479; 22 N. Y., 134; 55 Barb., 344.

The duties of directors of corporations are of the most responsible kind, and they should be held to full accountability for their acts to the stockholders, to whom they occupy the relation of trustees, with all which that matter implies of power and responsibility. *Gray, J. Beveridge v. N. Y. E. R. Co.*, 112 N. Y., 1, 22.

All powers conferred upon a corporation, unless otherwise expressly prescribed, must be exercised by its directors, who are constituted by law as

the agency for that purpose, and the consent of, or ratification by its stockholders, is not necessary to the validity of a corporate act, unless expressly required by statute or the by-laws of the corporation. *Beveridge v. N. Y. El. Ry. Co.*, 20 St. Rep., 962.

A person is a stockholder of a corporation as between himself and the creditors of it, where he holds a certificate of stock, and the books of the company disclose this to be his relation to it. *Wakefield v. Fargo*, 90 N. Y., 213.

Contracts executed by agents of corporation, in order to avoid personal liability and bind principals, must in general be the same as contracts between individuals. *L. S. Bank v. Coll*, 51 Hun, 63. See 94 N. Y., 145.

A trustee and stockholder of an insolvent corporation cannot, as a creditor, attach its property. *Throop v. H. L. Co.*, 58 Hun, 149.

Persons claiming to be officers of a corporation are estopped from denying its incorporation. *Peo. ex rel. v. Keese*, 27 Hun, 483; 94 N. Y., 145.

Persons creating an obligation in the name of a corporation purporting to have been created under the laws of another state, but, having no actual existence, are liable as partners. *Kruse v. Dusenbury*, 1 City Ct. Supp., 78. See 29 St. Rep., 891.

§ 5. STOCKS DEFINED.

Stocks, definition of. The interest which one has in the capital and net earnings of a corporation is represented by his stock. *Jermain v. Lake Shore & M. S. Ry. Co.*, 91 N. Y., 483, affirming 14 W. Dig., 166.

§ 6. STOCKHOLDER, HOW CONSTITUTED.

A subscriber for stock is recognized as a stockholder after the formation of the company; by payment he ratifies his subscription and becomes liable for the whole amount. *B. & A. R. R. Co. v. Gifford*, 87 N. Y., 294, citing 91 U. S., 45, 65.

§ 7. DIVIDENDS, DECLARATION OF.

The declaration of dividends rests in the discretion of the directors, uncontrolled by the courts. (112 N. Y., 1, 27.) Stock dividends may be created and held by stockholders, when representing property in excess of capital. *Williams v. W. U. Tel. Co.*, 93 N. Y., 162. The corporation may issue bonds in lieu of cash dividends to represent earnings expended in construction and improvement of the road. *Wood v. Lary*, 47 Hun, 555, citing 119 U. S., 296; 93 N. Y., 1, 162.

A stockholder has no legal title to the property or profits of a corporation until a division is made or dividend declared. He has no separate or individual right to its property, other than that enjoyed by other stockholders, until a dividend is declared. *Beveridge v. N. Y. El. R. R. Co.*, 112 N. Y., 1, 27, citing 57 N. Y., 196. See 122 id., 455.

§ 8. CALL; WHEN NECESSARY.

A call is generally necessary to render shareholders liable upon their subscription. *Morawetz on Corp.*, § 143.

§ 8a. BORROWER OF STOCK, WHEN EMPOWERED TO USE IT.

A borrower of stock on loan, having the certificate with the usual blank transfer, is presumed to be empowered to use the same. *Barclay v. Culver*, 30 Hun, 1, 7; citing 53 N. Y., 211; 75 N. Y., 211.

§ 9. ACTIONS IN RELATION TO STOCK.

An action will lie to prevent payment of large salaries to corporate officers, thereby despoiling the corporate property and depressing one's stock, in order to induce him to sell it. *Zeigler v. Hoagland*, 52 Hun, 335, citing 37 N. Y., 317; 39 id., 202.

Generally a stockholder must request the corporation to sue in case of contemplated injury thereto. But this need not be done where it is shown that the corporation is under control of those engaged in or concerned with unlawful schemes against it, and would necessarily be made defendants in the suit. *Anderson v. Wolf*, 41 Hun, 571; 35 id., 355; 40 id., 292; 69 N. Y., 154. And see 20 St. R., 35.

§ 10. ACTION TO ESTABLISH LIABILITY OF STOCKHOLDER.

In an action to establish individual liability of a stockholder, the record of a judgment against the corporation is competent evidence of a person's status as a creditor and of the amount due him. *Doctor v. Guggenheim*, N. Y. Daily Reg., Feb. 20, 1884, citing 83 N. Y., 313. But the remedy against the corporation by judgment and execution must first have been exhausted. *Richards v. Beach*, 12 St. R., 137; citing 19 Abb. N. C., 79; *Cook on Stock & Stockh.* (2nd ed.), §§ 209, 221.

One whose stock is not fully paid up is not liable for calls after an absolute and valid transfer of it. *Billings v. Robinson*, 94 N. Y., 415; *Tucker v. Gilman*, 121 N. Y., 189; citing 6 Hill, 624; 11 N. Y., 148; 52 id., 203; 88 id., 410; L. 1838, chap. 40, § 25.

§ 11. SUBSCRIPTION FOR STOCK.

A subscription for stock raises an implied promise to pay for it upon which an action will lie. *Upton v. Triblicock*, 91 U. S., 45; Buf., etc., R. R. Co. v. Dudley, 14 N. Y., 336. **As to release of obligation of subscriber of stock**, see 30 St. Rep., 324.

Any agreement showing an intention to subscribe for stock, however manifested, will bind both the maker and the corporation. *Cook, Stock & Stockh.* (2d ed.), § 52; citing *Fry v. Lex*, etc., R. R. Co., 2 Metc. (Ky.) 314, etc.

§ 12. OVERISSUE OF STOCK.

Overissue of stock, exceeding the charter limit is void. N. Y., etc., R. R. Co. v. Schuyler, 34 N. Y., 30.

§ 13. SHARES OF STOCK NON-NEGOTIABLE.

Shares of stock are non-negotiable. *Mech. Bank v. N. Y. & N. H. R. R. Co. v. Schuyler*, 34 N. Y. 30. The purchaser or assignee of corporate stock obtains no better title than the seller or assignor, and takes it subject to all the legal and equitable rights of third parties; the owner cannot be divested of it except by his own voluntary act or consent. *Weaver v. Barden*, 49 N. Y., 286. A company which transfers stock to an endorsee of the certificate, after notice of an adverse claim, does so at his peril. *Hawes v. Gas C. B. Co.*, 36 St. Rep., 48. An owner cannot be deprived of his stock by forgery of the certificate and transfer on the corporation books. *Pratt v. Taunton C. M. Co.*, 123 Mass., 110; 86 in., 277; 126 id., 443; L. R., 9 Eq., 181; *Pollock v. Nat. Bk.*, 7 N. Y., 273. And see upon the subject *Cook, Stock and Stockh.*

(2nd ed.), §§ 363-7; Colb. on Col. Secur., § 308, 309. Where new certificates are issued by a company upon a forged indorsement, the owner can compel the company to issue to him new certificates, or recover the value of his stock, with dividends. Colb. Col. Secur., § 309; citing Tel. Co. v. Davenport, 97 U. S., 369; Sewell v. Water Power Co., 4 Allen (Mass.), 277; 123 Mass., 110; 7 N. Y., 274; 8 H. L. Cas, 751, and many other cases.

§ 14. PURCHASER OF STOCK TAKES IT SUBJECT TO BURDENS.

A purchaser of stock takes it subject to new burdens imposed upon it by a valid resolution, before the purchase; and the company may tender a certificate conformable to the resolution. Campbell v. Am. Zylonite Co., 55 Super. (J. & S.), 562. But one's right to shares of stock cannot be defeated by a subsequent resolution of the directors. Gurney v. O. T. & S. Co., 29 St. R., 274; 8 N. Y. S., 549.

§ 15. INCREASE AND REDUCTION OF CAPITAL STOCK.

Where the charter authorized an increase of stock, the determination of the directors so to do is conclusive, if *bona fide*. Sutherland v. Olcott, 95 N. Y., 93.

Power to reduce capital stock must be conferred by statute. Authority to "fix and limit" the capital stock is not authority to reduce it. Sutherland v. Olcott, 95 N. Y., 93, citing many cases. See L. R. 4 Ch. App. 682, n.; 18 Wall., 233; 105 U. S., 143.

§ 16. TRANSFER OF STOCK.

Refusal by a corporation, without valid reasons, to transfer stock when certificate presented by an assignee is a waiver of the requirements; the transfer is complete, and the corporation must recognize the assignee as though transfer made upon the books. Robinson v. Bank, etc., 95 N. Y., 637.

The stock and transfer book of a corporation must be exhibited at all reasonable times. Kennedy v. C., R. I., etc., R. R. Co., 14 Abb. N. C., 326. See 41 Hun, 20.

A delivery of certificates of stock with power of attorney, passes title thereto without transfer upon the books. An attachment of the shares as property of the transferor does not excuse the company from transferring them. Dunn v. S. F. Ins. Co., 19 W. Dig., 211. See 98 N. Y., 87.

§ 17. GIFT OF STOCK, HOW CONSUMMATED.

A gift of stock, by one who has paid for it, may be transferred by assignment in writing, without transfer or even possession of the certificate. De Camnout v. Bogert, 36 Hun, 382.

§ 18. SUBSCRIPTIONS OBTAINED BY FRAUD.

Subscriptions obtained by fraud may be collected for the benefit of creditors. Ogilvie v. Knox Ins. Co., 22 How. (U. S.), 380. (See 30 Moak's Eng., 187, n.) Olcott v. Chandler, 1 City Ct., 30.

For cases of fraud as defense to action for subscription, see 30 Moak's Eng., 187, n.

§ 19. CAPITAL STOCK IS A TRUST FUND FOR CREDITORS.

The capital stock, including unpaid subscriptions therefor, is a trust fund for the benefit of general creditors, who may follow it into the hands of

anyone, except bona fide creditors, or purchasers without notice. This trust can only be defeated by payment in good faith. *Curran v. Arkansas*, 15 How. (U. S.), 304; *Sawyer v. Hoag*, 17 Wall., 610; *Hatch v. Dana*, 101 U. S., 205; 103 id., 498; 106 id., 519; 113 id., 116.

§ 20. OFFER OF CORPORATION TO SELL STOCK BELOW PAR IS FRAUDULENT.

An offer of a corporation to sell stock below par amounts to a fraud upon the state and the creditors, by rendering the corporation unable to raise necessary capital. And such action is a defense to an action to recover subscriptions. *Zelaya Mining Co. v. Meyer*, 28 N. Y. St. R., 759; S. C., 8 N. Y. S., 487.

§ 21. SHAREHOLDER DEFINED.

A shareholder is an owner of stock who is recognized as a stockholder by the corporation. *Rosevelt v. Brown*, 11 N. Y., 150; *Worrall v. Judson*, 5 Barb., 210.

One may become a stockholder in a corporation by other means than paying money, as rendering services, or parting with any actual consideration. *McComb v. Bh. Asso.*, 31 N. Y. St. R., 325; S. C., 10 N. Y. S., 546.

§ 22. WHEN STOCKHOLDER MAY VOTE WHEN PERSONAL INTEREST INVOLVED.

A stockholder may vote upon a question wherein he has a personal interest, separated from that of other shareholders; each represents himself and is not a trustee for others. A shareholder in a water company who, on his own responsibility, built an extension of the company's works, can, although he is a director, vote at a shareholders' meeting in favor of the purchase by the company of such extension from him. *Gamble v. Queens Co. W. Co.*, 25 Abb. N. C., 410.

§ 23. SHARES ARE PERSONAL PROPERTY.

Shares in a corporation are choses in action and personal property. *Morawetz on Corp.* (2d ed.), § 224.

§ 24. CORPORATION NEED NOT RECOGNIZE OVERISSUE OF STOCK.

A company cannot be compelled to recognize the validity of shares issued in excess of the amount authorized by its charter. *N. Y. C. R. R. Co. v. Schuyler*, 34 N. Y., 30, 49, 50; *Morawetz on Corp.* (2d ed.), §§ 683, 761-7.

§ 25. SHAREHOLDERS ARE BOUND BY THE ACTS OF A MAJORITY.

"The majority of a corporation" means that portion of the shareholders present at general meeting, who are entitled to control the corporation by their votes. *Morawetz on Corp.* (2d ed.), § 476. Only shareholders can vote at meetings. *Id.*, § 483.

§ 26. CORPORATION CANNOT RATIFY CERTAIN ULTRA VIRES ACTS.

A corporation cannot ratify ultra vires acts which are forbidden by law or statute. *Morawetz on Corp.*, § 619, et seq.

§ 27. CORPORATION NOT RESPONSIBLE FOR TORTIOUS ACTS OF SHAREHOLDERS.

A corporation is not responsible for wrongful acts of a body of its shareholders. *Morawetz on Corp.*, § 234. Shareholders are not agents of the company. *Id.*, § 238.

§ 28. MORTGAGE OF CORPORATE PROPERTY.

A corporation may give a mortgage to secure future advances or a debt contracted simultaneously. *Jones v. Guaranty Co.*, 101 U. S., 622; *Lord v. Fuel Gas Co.*, 99 N. Y., 547; 1 *Morawetz on Corp.* (2d ed.), § 348; 51 Hun, 134; *Graham v. Atlanta Hill, etc., Co.*, N. Y. Daily Reg., Oct. 14, 1884; 3 Daly, 263.

To constitute a valid mortgage of corporate property, there must be obtained the written consent of the owners of two-thirds of the stock. *Vail v. Hamilton*, 85 N. Y., 456. But the failure to obtain such consent may be cured by subsequent ratification, provided that would not defeat intervening rights. *Bank v. Averell*, 96 N. Y., 467. See 94 N. Y., 334; 69 id., 328; 65 id., 43; 80 id., 599; 122 id., 187; 36 N. Y. St. R., 763.

The fact that a corporation was insolvent at the time of the transfer or assignment is not conclusive evidence that such transfer was made "in contemplation of insolvency of the company," within the purview of 1 R. S., 603, § 4, which declares that such disposition of property is void. The act must have been done because of existing or contemplated insolvency. *Paulding v. Chrome Steel Co.*, 94 N. Y., 334. See also, 36 Barb., 330; 18 Abb. Pr., 419; 5 Hun, 123; 59 N. Y., 5; 90 id., 607; 31 Hun, 330; 21 N. Y., 406; 30 Barb., 644; 36 id., 261; 15 id., 62; 4 Burr., 22, 35; 18 Wall., 375, 388; 31 N. Y. St. R., 188, 325; 32 id., 506. See as to fraudulent judgments against corporations, *Varnum v. Hart*, 6 N. Y. S., 346; 119 N. Y., 101; 125 id., 530.

§ 29. ACTIONS AGAINST CORPORATIONS.

The people, through their attorney-general, and not a private citizen, may question by legal proceedings acts of a corporation as *ultra vires*. *Starin v. Edson*, 112 N. Y., 206; 111 id., 64. See also 121 N. Y., 45.

Where the directors of a corporation are acting in a manner destructive to the rights of other shareholders, or where the majority of the shareholders are pursuing an illegal course in the name of the corporation and which can be restrained by the aid of a court of equity, an action to obtain relief may be maintained by a stockholder, or those whose rights are thus affected may join as plaintiffs in the action. *Barr v. N. Y., L. E. & W. Ry. Co.*, 96 N. Y., 444.

An action to impeach a contract made by directors of a corporation will not be sustained, unless it is shown that the trustees contemplate some undertaking not within the scope of the charter, or prejudicial to the interests of the stockholders, or the public, or the corporation; directors cannot exceed the charter powers, but courts will not interfere with what they have done on proof of mere error of judgment. *Leslie v. Lorillard*, 110 N. Y., 549. See 122 N. Y., 135, 141.

A corporation cannot avail itself of the defense of *ultra vires* where the contract has been in good faith fully performed by the other party, and the corporation has had the full benefit of the performance and of the contract. *Woodruff v. Erie Ry. Co.*, 93 N. Y., 609; 97 id., 348. See 9 Daly, 78; 57 Hun, 343.

§ 30. DISSOLUTION AND FORFEITURE OF CORPORATIONS.

A corporation is not dissolved, and in consequence incapacitated to sue by reason of its insolvency, assignment to trustees and suspension of its corporate powers for a year. *N. E. Iron Co. v. Gilbert El. Ry. Co.*, 91 N. Y., 153. See 90 id., 502; 49 id., 548.

When the franchises or contracts of a corporation survive the legislative or judicial forfeiture of its charter, See *Peo. v. O'Brien*, 111 N. Y., 1; 50 id., 305; 46 Barb., 365. See, also, as to the nature of the franchise, 33 Fed. R., 457.

The appointment of a receiver of a corporation does not work its dissolution, nor prevent litigation by or against it. *Del Valle v. Navarro*, 21 Abb. N. C., 136; see 59 N. Y., 548; 35 Hun, 410; 107 N. Y., 96; 124 id., 339.

A corporation by omitting to perform a duty imposed by its charter or to comply with its provisions, does not *ipso facto* lose its corporate character, where the language of the act of incorporation is that in such event "said corporation shall be dissolved." *Day v. Ogdensburg, etc., Ry. Co.*, 107 N. Y., 129; See 106 id., 668. **As to parties to dissolution proceedings,** See 16 W. Dig., 139; 28 Hun, 369; 52 id., 174; 72 N. Y., 245; 75 id., 335; 78 id., 524; 110 Pa. St., 391.

Where insolvency of a corporation is not *per se* ground of forfeiture, and will not authorize an injunction against the exercise of its franchises at the instance of a private person. *Moran v. Lydecker*, 11 Abb. N. C., 298.

While a corporation cannot be deprived of its franchises because of several illegal acts of its stockholders, yet a combination among several corporations by which their stockholders are to pool their stock in the hands of trustees, who are to issue trust certificates in lieu thereof, and distribute by a uniform dividend the profits of the various corporations is, if acted on by the corporations, a corporate act, even though not sanctioned by the formal vote of the respective corporations. *People v. North River Sugar Ref. Co.*, 22 Abb. N. C., 164.

Nor can corporations enter into a scheme of consolidation or co-partnership, as this is an abuse of corporate powers and privileges, constituting sufficient ground of forfeiture of charter. *Idem.*, *aff'd* 121 N. Y., 582. See 59 Hun, 387; 119 N. Y., 46; 121 id., 1; 25 Abb. N. C., 438.

For Notes on Dissolution, and Receivers of Corporations, see those subjects.

§ 31. BY-LAWS.

The majority may pass reasonable by-laws. *Morawetz on Corp.*, sec. 491-2.

By-laws of corporations must be reasonable. A by-law may regulate or modify the constitution of a corporation, but cannot alter it; nor can a by-law impair a vested right. *Kent v. Quicksilver Mining Co.*, 78 N. Y., 159; *Raym.*, 113; 4 Burr., 2204; 18 Wall., 233; 3 Mass., 363; *Grant on Corp.*, 91; *Angell & Ames on Corp.*, § 347; 12 Q. B., 347; 18 Pac. R. (Cal.), 153; 8 Daly, 20; *Fields Corp.*, §§ 313, 314; *Morawetz on Corp.*, § 368, citing 3 Am. L. J., 290; 32 W. Dig., 302; 24 Barb., 570; *Bacon's Abr. By-Laws*, p. 141.

All acts done by portions of the corporation which bear the appearance of trick, secrecy or fraud, will be held invalid. *E. D. Smith, J.*; *Peo. v. Alb. & Susq. Ry. Co.*, 7 Abb. Pr. N. S., 283.

§ 32. SERVICE OF PROCESS UPON CORPORATION.

As to service of process upon and notice to the corporation, see *Morawetz on Corp.*, §§ 234 n, 229.

§ 33. CORPORATE LIENS UPON SHARES.

The corporation may obtain a lien upon shares by statute, by its charter, and perhaps by by-laws. It covers all the shareholders' shares and dividends. *Cook, Stock and Stockh.* (2d ed.), §§ 522-4, 626.

§ 34. MISCELLANEOUS SUBJECTS.

- (a) As to negotiable paper issued by a corporation.
- (b) Ostensible authority of agents.
- (c) Malicious prosecution and slander.
- (d) Ratification.
- (e) Access of books.
- (f) Fraud and fraudulent transfers.
- (g) Injunction against *ultra vires* acts.
- (h) Spoliation.
- (i) Resignation of trustees.
- (j) Compelling election of officers.
- (k) Fiduciary relations of agents.
- (l) Liability of officers.
- (m) Statutory liability.
- (n) Elections.
- (o) Powers of trustees.
- (p) Liability of directors.
- (q) Stockholders book as evidence.
- (r) Annual reports.
- (s) Interest on subscription for stock.
- (t) Forfeiture.
- (u) Increase or reduction of capital stock.
- (v) Lost certificates.
- (w) Statement of financial condition.
- (x) Liabilities of stockholders.
- (y) Employment of servants.
- (z) Receivers.

(a) As to negotiable paper issued by a corporation, see 15 W. Dig., 227; 60 N. Y., 96; 53 Super. Ct., 367; 15 St. R., 39; 25 St. R., 805; 44 Hun, 130; 32 id., 105; 13 N. Y., 309; 80 id., 110; 30 St. R., 424; 56 Hun, 412. (b) **Ostensible authority of agents.** 17 St. R., 327, and cases cited; 23 id., 318; 44 Hun, 130; 18 St. R., 954. (c) **Malicious prosecution and slander.** 34 Hun, 366; 42 Hun, 153; 73 N. Y., 543; 106 id., 669. (d) **Ratification.** 44 Hun, 130; 115 N. Y., 380; 114 id., 216; 118 id., 365; 78 id., 169; 90 id., 607. (e) **Access to books.** 19 Abb. N. C., 1; 25 id., 350; 20 id., 195; 50 Super. Ct., 456; 41 Hun, 20; 44 id., 552. (f) **Fraud; fraudulent transfers.** 2 N. Y. S., 753; 2 How. Pr. N. S., 253. (g) **Injunction against acts ultra vires.** 110 N. Y., 519; 112 id., 1, 28; (h) **Spoliation.** 52 Hun, 385; 37 N. Y., 317; 39 id., 202; 52 Hun, 166; rev'd, 25 Abb. N. C., 410; 18 St. Rep., 154; 40 Hun, 150; 41 id., 571. (i) **Resignation of trustees,** 24 W. Dig., 229; 29 St. R., 726. (j) **Compelling election of officers,** 47 Hun, 258; 91 N. Y., 1. (k) **Fiduciary relations of agents,** 14 Abb. N. C., 272; 91 N. Y., 650; 2 Johns. Ch., 253; 103 N. Y., 58; 54 Hun, 338. (l) **Liability of officers,** 47 Hun, 577; 89 N. Y., 337; 88 id., 136. (m) **Statutory liability,** 36 Hun, 365; 14 St. R., 682; 54 Super. Ct., 117. (n) **Elections,** 91 N. Y., 1; 12 Abb. N. S., 394; 61 Barb., 397. (o) **Powers of trustees,** 109 N. Y., 512. (p) **Liability of directors,** 36 Hun, 365; 21 id., 568; 30 id., 311; see 58 Hun, 325, 419; 118 N. Y., 365; 104 N. Y., 613; 86 id., 95; 1 Hun, 332. (q) **Stockholders book as evidence,** 13 Hun, 49. (r) **Annual reports,** 96 N. Y., 323-4; 101 id., 72,

373; 69 id., 402; 106 id., 277; 80 id., 128; 44 Hun, 101; 11 Abb. Pr. N. S., 370. (s) **Interest on subscription of stock**, 71 N. Y., 298; 16 id., 380; 41 id., 388; 62 Barb., 444. (t) **Forfeiture**, 2 Barb., 294; 21 id., 543; 18 id., 297; 10 id., 261. (u) **Increase or reduction of capital stock**, 93 N. Y., 162; 95 id., 93; 19 Hun, 577; 36 id., 488. (v) **Lost certificates**, 46 Hun, 223. (w) **Statement of financial condition**, 43 Hun, 188. (x) **Liabilities of stockholders—Judgment as evidence**, 83 N. Y., 313; Cook, Stocks and Stockh. (2nd ed.), § 209. **Definition of laborer, etc.**, 26 Barb., 202; 62 id., 444; 19 N. Y., 119; 57 id., 334; 51 id., 155; 24 id., 482; 25 Abb. N. C., 376; 90 N. Y., 213; 76 id., 50; 132 U. S., 231. **How terminated**, 95 N. Y., 295; 13 Hun, 408; 29 id., 161. **In whose favor existing**, 11 Hun, 141; 45 id., 193; 38 id., 461; 29 id., 542; 28 N. Y., 458; 88 id., 129; 91 id., 308. (y) **Employment of servants**, 26 St. R., 184. (z) **Receivers**, 26 Hun, 232; 37 id., 522; 53 id., 67.

CHAPTER III.

THE RAPID TRANSIT ACT.¹

LAWS OF 1891, CHAPTER 4.

- SECTION 1. Commissioners of rapid transit, how appointed and constituted. Vacancies, how filled.
2. Oath of commissioners; oaths to be filed.
 3. First meeting of board; by-laws, rules, record of proceedings to be kept.
 4. Commissioners to determine necessity of railroad and general plan of construction. Location of routes; consents to be obtained; proceedings to condemn land; parks excepted. Tunnels under parks, etc.; elevated roads forbidden in certain places.
 5. Plans to be approved by common council; consents to be obtained. Consents of property owners; value of property; commissioners to condemn land. Appointment of commissioners by court; their determination and report.
 6. Detailed plans; subways; interference with other structures; expenses.
 7. Sale of franchise at auction; notice of terms and conditions. Commissioners to supervise construction; deposits; bids void unless corporation organized; resale. When roads to be constructed; extensions; sale of franchises on forfeiture; distribution of proceeds. Reorganization of corporation; amount of stocks and bonds; tariffs; rejection of bids; resale; conditions; duration of franchise.
 8. Resale of franchises on expiration of term; conditions; who may purchase.
 9. Board may employ attorneys, engineers, etc.
 10. Appropriation of money; application to court therefor; audit and payment; issue of revenue bonds. Expenses, how repaid; compensation of commissioners; terms of sale of franchises.
 11. Twenty-five persons to organize corporation; articles to be approved, acknowledged and filed. Stock subscription books; to be fifty subscribers; percentages to be paid in cash; preferences.
 12. Thirteen directors to be chosen; tenure of office; by-laws.
 13. Record of proceedings to be kept; certificate thereof; repayment of deposits to corporations and purchasers of franchises.
 14. Plans, but not route, may be changed; certificate and account of change to be filed.

¹ See Notes of Decisions applicable to Rapid Transit Act at the end of this chapter.

SECTION 15. Place of taxation of corporation.

16. Directors to manage affairs of corporation; vacancies, how filled; books to be exhibited.
17. Directors may require payment of subscriptions in such installments as they deem proper.
18. Stockholders personally liable to extent of stock, and to laborers; action therefor to be preceded by notice; recovery over against corporation.
19. Stock, how transferred.
20. Capital, how increased or reduced; stockholders to approve; statement to be approved, attested and filed.
21. Executor, trustee or pledgee holding stock not liable as stockholders; pledgor, and owners liable.
22. Corporation liable for debts of laborers against contractor; limitation of actions.
23. Corporation may hold necessary real estate; how acquired; proceedings on disagreement with owners.
24. Corporations formed under this act shall have power:
 1. To take voluntary grants, or necessary real and personal property.
 2. To purchase property necessary to construction and operation of road.
 3. To cross and unite with other roads. Commissioners to fix compensation, crossings and connections, in case of disagreement.
 4. To transport persons and property by motor other than animal power.
 5. To construct and operate railroads in and underneath streets; to excavate; must restore streets; use of parks, etc., limited.
 6. To borrow money and issue bonds therefor.
25. Employees must wear badges.
26. Corporation must carry mails; compensation; must furnish extra, or fast mail train; compensation.
27. Ejection of passenger refusing to pay fare.
28. Trains to be run on schedule time; passengers and freight to be transported and discharged at reasonable times and places, at legal rates.
29. Intoxication of conductor or engineer a misdemeanor.
30. Willful injury to property a misdemeanor; and offender liable for damages.
31. Legislature may dissolve corporation.
32. Railroads may connect with other routes and ferries, and extend facilities; Battery Park excepted; conditions and compensation. Certificate in regard to connections, etc., to be attested and recorded; powers thereupon secured. Consents of authorities and property owners to be obtained before connecting routes; disagreements, how settled.
33. Corporations may remove surface roads; must restore same and pay damages occasioned; not to use tracks of horse railways.

SECTION 34. Construction of this act; does not affect L. 1875, c. 606, or art. 5 of ch. 565, 1890, except, etc.; not to impair certain rights of corporations, etc., nor affect certain acts, except, etc.

35. No surface railroads to be constructed in New York City under this act.

36. Repeal of inconsistent acts.

37. When to take effect.

SECTION 1. Commissioners of Rapid Transit; how appointed and constituted; vacancies how filled.—In cities having over one million of inhabitants, according to the last preceding national or state census, where rapid transit commissioners shall have been appointed since the first day of December, eighteen hundred and ninety under the provisions of chapter six hundred and six of the laws of eighteen hundred and seventy-five, and the amendments thereto, by the mayor of any such city, said commissioners shall become commissioners of rapid transit under the provisions of this act. If no such commissioners have been appointed since the first day of December, eighteen hundred and ninety, and the date of the passage of this act in any city in this state containing a population of over one million inhabitants, according to the last preceding national or state census, then the mayor of such city may at any time after the passage of this act, appoint five persons who shall be residents of such city, who shall be commissioners of rapid transit under the provisions of this act. The commissioners thus appointed are hereby constituted a board of rapid transit railroad commissioners, in and for the city in which they are appointed. They shall have and exercise the specific authority and powers hereinafter conferred, and also such other and necessary powers as may be requisite to the efficient performance of the duties imposed upon the said board by this act. If a vacancy shall at any time occur in any such board of rapid transit railroad commissioners, such vacancy shall be filled by the mayor of the city in which said board exists, by the appointment of a citizen of said city, who shall belong to the same political party as did the commissioner whom such appointee succeeds.

§ 2. Oath of Commissioners; oaths to be filed.—Within twenty days after the passage of this act, in the case of commissioners who become such by its terms, and within twenty days after their appointment in the case of commissioners appointed under its provisions, each of the said commissioners shall take and subscribe an oath faithfully to perform the duties of his office,

which oath shall be filed in the office of the clerk of the county within which said board is appointed.

§ 3. First meeting of board; by-laws and rules; record of proceedings to be kept.—Within thirty days after the passage of this act, in the case of commissioners who become such by its terms, and within twenty days after their appointment, in the case of commissioners appointed under its provisions, the said commissioners shall meet and organize as a board. The board when so organized, may frame and adopt by-laws not inconsistent with this act, and establish suitable rules and regulations for the proper exercise of the powers and duties hereby conferred and imposed, and may from time to time amend the same. Four members of the board shall constitute a quorum for the transaction of business, but a less number may adjourn meetings. The said board shall adopt a seal and keep a record of its proceedings, which shall be a public record and be open to inspection at all reasonable times.

§ 4. Commissioners to determine necessity of railways and general plan of construction.—The said board upon its own motion may proceed, from time to time, to consider and determine whether it is for the interest of the public and of the city in which it is appointed, that a rapid transit railway or railways for the conveyance and transportation of persons and property should be established therein, and upon the request in writing of the local authorities of any such city at any time, the said board shall proceed forthwith to consider and determine the same questions, and in each case the said board shall conduct such an inquest and investigation as may be deemed necessary in the premises. If, after such consideration and inquest, the said board shall determine that rapid transit railway or railways, in addition to any already existing, are necessary for the interest of the public and such city, it shall proceed to determine and establish the route or routes thereof and the general plan of construction. Such general plan shall show the general mode of operation and contain such details as to manner of construction as may be necessary to show the extent to which any street, avenue or other public place is to be encroached upon and the property abutting thereon affected, and the concurrent votes of at least four members of the board shall be necessary for the purpose of determining and establishing such route or routes and plan of construction.

Location of routes; consents to be obtained; proceedings to condemn land; parks excepted.—The said board, from time to time, may locate the route or routes of such railway or railways over, under, upon, through and across any streets, avenues and lands within such city, including blocks between streets or avenues or, partly over, under, upon, through and across any streets, avenues and lands within such city and partly through blocks between streets or avenues; provided that the consent of the owners of one-half in value of the property bounded on and the consent also of the local authorities having control of that portion of a street or highway upon which it is proposed to construct or operate such railway or railways be first obtained, or in case the consent of such property owners cannot be obtained, that the determination of three commissioners appointed by the general term of the supreme court in the district of the proposed construction, given after due hearing of all parties interested, and confirmed by the court, that such railway or railways ought to be constructed or operated, be taken in lieu of the consent of such property owners; except that no public park nor any lands or places, lawfully set apart for, or occupied by, any public building of any city or county, or of the state of New York, or of the United States, nor those portions of Grand, Classon, Franklin avenues and Downing street in the city of Brooklyn, lying between the southerly line of Lexington avenue and northerly line of Atlantic avenue, nor that portion of Classon avenue in said city lying between the northerly line of Lexington avenue and southerly line of Park avenue, nor that portion of Washington avenue in said city lying between Park and Atlantic avenues, nor DeBevoise place, Irving place and Lef-fert's place, Lee avenue, Nostrand avenue, Waverly avenue, Vanderbilt avenue and Clinton avenue in said city of Brooklyn, nor that portion of the city of Buffalo lying between Michigan and Main streets, nor any part of Fifth avenue in the city of New York, nor that portion of any street or avenue which is now actually occupied by any elevated railroad structure, shall be occupied by any corporation to be organized under the provisions of this act for the purpose of constructing a railway in or upon any of such public parks, lands or places, or upon or along either of the said excepted streets or avenues.

Tunnels under parks; elevated roads forbidden in certain places.—It shall be lawful for said commissioners to

locate the route of a railway or railways, by tunnel under any such public parks, lands or places and to locate the route of any railway to be built, under this act, across any of the streets and avenues now occupied by an elevated railroad structure in the city of New York or across any of the streets or avenues excepted in this act at any point at which, in its discretion, the board of rapid transit railroad commissioners may deem necessary in the location of any route or routes. Nothing in this act shall authorize the construction of an elevated railway on Broadway south of Thirty-third street, nor on Madison avenue in the city of New York. It shall not be lawful to grant, use or occupy, for the purposes of an elevated railroad, except for the purpose of crossing the same, any portion of the following named streets and places in the city of New York, that is to say: Second avenue below Twenty-third street; Nassau street; Printing House square, so called, south of Frankfort street; Park row, south of Tryon row; Broad street and Wall street.

§ 5. Plans to be approved by common council; consents to be obtained.—After any determination by said board of any such route or routes and of any general plan of construction of said railway or railways, the said board shall transmit to the common council of said city a copy of said plans and conclusions as adopted. It shall be the duty of such common council upon receiving such copy of plans and conclusions to appoint a day not less than one week nor more than ten days after the receipt thereof for the consideration of such plans and conclusions, and the said common council shall, on the day so fixed, proceed with the consideration thereof and may continue and adjourn such consideration, from time to time, until a final vote shall be taken thereon, as hereinafter provided. Within four weeks after the copy of such plans and conclusions adopted by the board of rapid transit railroad commissioners shall have first been received by said common council, a final vote shall be taken thereon, by ayes and nays, in the form of a vote upon a resolution to approve such plans and conclusions, and to consent to the construction of a railway or railways in accordance therewith. Upon the adoption of such resolution* a majority vote of all the members of the common council and the approval of the mayor, and in the case of the refusal or failure of the mayor to approve such resolution, then

* So in the original.

by a two-thirds vote of all of the members of the common council, the said plans and conclusions shall be deemed to have been finally consented to and adopted, and such consent shall be deemed to be the consent of the local authorities of such city; provided, that where in any such city the exclusive control of any street, road, highway or avenue which is to be used or occupied by any railway or railways constructed under the provisions of this act, is by law vested in any local authority other than the common council of such city, the approval of the aforesaid plans and conclusions and the consent to the construction of a railway thereunder shall be given by such local authority in place of and if required in addition to such approval and consent by said common council and with like effect.

Consents of property owners; value of property; commissioners to condemn land.—Upon obtaining the approval and consent of the local authorities, as above provided, the said board of rapid transit railroad commissioners shall take the necessary steps to obtain, if possible, the said consents of the property owners along the line of the said route or routes. For the purposes of this act the value of the property bounded on that portion of any street or highway in, upon, over or under which it is proposed to construct or operate such railway or railways, or any part thereof, shall be ascertained and determined from the assessment-roll of the city in which the said property is situated, confirmed or completed last before the local authorities shall have given their consent as above provided. If such consents of property owners cannot be obtained, the said board may, in its own name, make application to the general term of the supreme court in the judicial district in which such railway is to be constructed for the appointment of three commissioners to determine and report after due hearing whether such railway ought to be constructed and operated. Two weeks' notice of such application shall be given by daily publication thereof in six daily newspapers published in the city where such proposed railway is to be constructed, if there be so many newspapers published in said city, and if not then in all the daily newspapers published in said city. The newspapers in which said publication shall be made, shall be designated by the general term of the supreme court to which such application is to be made on the application of the commissioners without notice.

Appointment of commissioners by court; their determination and report.—The said general term, upon due proof of the publication aforesaid, shall appoint three disinterested persons who shall act as commissioners, and such commissioners within ten days after their appointment shall cause public notice to be given in the manner directed by the said general term, of their first sitting and may adjourn from time to time until all their business is completed. Vacancies in such commission may be filled by said general term after such notice to persons interested as the general term may deem proper, and the evidence taken before as well as after such vacancy occurred shall be deemed to be properly before such commissioners. The said commissioners shall determine after public hearing of all parties interested whether such railroad ought to be constructed and operated and shall report the evidence taken to said general term, together with a report of their determination whether such road ought to be constructed and operated, which report if in favor of the construction and operation of such road shall, when confirmed by said court, be taken in lieu of the consent of the property owners above mentioned. Such report shall be made within sixty days after the appointment of said commissioners, unless the said court or a judge thereof shall extend such time.

§ 6. Detailed plans; subways; interference with other structures; expenses.—When the consents of the local authorities and the property owners, or in lieu thereof, the authorization of the said supreme court upon the report of commissioners, shall have been obtained, the board of rapid transit railroad commissioners shall at once proceed to prepare detailed plans and specifications for the construction of such rapid transit railway or railways, including all devices and appurtenances deemed by it necessary to secure the greatest efficiency, public convenience and safety, including plans and specifications for suitable support, turnouts, switches, sidings, connections, landing places, buildings, platforms, stairways, elevators, telegraph and signal devices and other suitable appliances incidental and requisite to what the said board may approve as the best and most efficient system of rapid transit in view of the public needs and requirements, and the said board may in its discretion include in said plans provisions for subways or tunnels for sewer, gas or water pipes, electric wires and other conductors proper to be

placed under ground, whenever necessary so to do in order to permit of the proper construction of any railway herein provided for in accordance with the plans and specifications of the said board. Whenever the construction of any railway, depressed way, subway or tunnel under the provisions of this act shall interfere with, disturb or endanger any sewer, water pipe, gas pipe or other duly authorized subsurface structure, the work of construction at such points shall be conducted in the city of New York, in accordance with the reasonable requirements and under the supervision of the commissioner of public works, and in other cities in accordance with the reasonable requirements and under the supervision of the officer or local authority having the care of and the jurisdiction and control over such subsurface structures so interfered with, disturbed or endangered. All expenses incidental to such supervision and to the work of reconstructing, readjusting any such sewer, water pipe, gas pipe or other duly authorized subsurface structure shall be borne and paid by the company constructing any such railway, depressed way, subway or tunnel.

§ 7. Sale of franchises at auction ; notice of terms and conditions.—The said board after having secured the necessary consents and after having prepared such detailed plans and specifications as are by this act provided for, shall sell at public auction in the city where said railway or railways are to be built and for the account and benefit of said city the right, privilege and franchise to construct, maintain and operate such railway or railways. Notice of the time and place of such sale shall be published three times a week at least six successive weeks in at least three daily newspapers published in said city. The board may prescribe all such terms and conditions of sale as it may deem for the interest of the public and of the city in which the railway or railways are to be constructed. The advertisement of sale shall contain only so much of the said terms, plans and specifications for the construction as the board may think proper, but such advertisement must state at what place the full terms, plans and specifications may be examined, and they shall be subject to examination under such reasonable rules and regulations as the board may prescribe.

Commissioners to supervise construction ; deposits ; bids void at option of board unless corporation organized, etc. ; resale.—The terms of sale shall provide for the construction of

the railway or railways under the supervision of the board, and for the approval of an engineer or engineers to be appointed from time to time by the board, and the corporation or corporations to be organized for the purpose of constructing and operating such railway or railways as in this act provided shall pay such engineer or engineers such salary as may, from time to time, be fixed by the said board of rapid transit railroad commissioners. Such engineer or engineers shall hold their office at the pleasure of the said board. The terms of sale shall require the successful bidder to deposit with the comptroller or chief fiscal officer of the city, in cash or approved securities, such amount as the board may deem sufficient to constitute a guarantee of full compliance with the terms of sale by the purchaser and by the corporation to be formed for the purpose of building and operating said railway as hereinafter provided. Said bids and all rights which may have been acquired thereunder shall become null and void and of no effect, at the option of said board, should there be a failure to organize a corporation to exercise such rights, privileges and franchises as required by said terms of sale and this act, or for any violation of any of the requirements of said terms of sale which should be complied with before such corporation is organized, and thereupon any deposit which may have been made pursuant to such terms of sale shall be paid into the treasury of such city upon a certificate being made and filed by said board with the public officer with whom such deposit shall have been made, that said bid and all rights which may have been acquired thereunder have become null and void and of no effect; and said rights, privileges and franchises shall be again sold by said board, subject to all the provisions of this act regulating such sales.

When roads to be constructed; extensions; sales of franchises on forfeiture; distribution of proceeds.—The terms of sale shall require the construction of the road to be begun within a time to be specified in said terms of sale, and to be finished within a certain time thereafter to be specified therein and may prescribe the time within which portions of the same shall be begun and finished. The said terms of sale may reserve to the board the power to extend the times for the commencement and completion of the construction of said railway or portions of the same, if in its discretion the said board deem such extension to be for the best interests of the city. In case the cor-

poration formed for the purpose of constructing said railway shall fail to begin or finish the construction within the the* times for those purposes respectively limited, all rights, privileges and franchises of such corporation to maintain and operate said railway shall be forfeited, and upon such forfeiture being adjudged by the court in a suit brought for that purpose in the name of the people, or by said board of rapid transit railroad commissioners, then the said board shall have power to advertise and resell said rights, privileges and franchises and so much of the road as shall have been constructed by such corporation; such suit shall have preference over all other cases in all courts; and the proceeds of such resale shall be applied first to the payment of the expenses of the resale, and then to the discharge of any liens which may have been created upon such property, and the balance shall be paid over to the said corporation.

Reorganization of corporation; amount of stocks and bonds; tariffs; rejection of bids; resale, conditions duration of franchise.—The terms of sale must provide for the organization by the purchaser or purchasers of such rights, privileges and franchises of a corporation to exercise the same, and to construct, maintain and operate such rapid transit railway or railways, with the powers and subject to the duties and liabilities granted or imposed by this act. The said terms of sale must also specify the amount of the capital of any such corporation, and the number of shares of capital stock which such corporation shall be authorized to issue, the percentage to be paid in cash by the subscribers on subscribing for such shares, the maximum amount of the bonded indebtedness which such corporation be authorized to incur, and which may be secured by mortgage upon its property and franchises, and the maximum rates of fares and freight which such corporation may charge and collect for the carriage of persons and property. The said board may, if it considers that the public interest requires it to do so, reject all* bids and readvertise the said rights, privileges and franchises for sale, with the same or different terms of sale, as often as it may deem necessary in the interest of such city, and shall finally accept that bid, which under all circumstances in its opinion is most advantageous to the public and such city; and no bid shall be accepted without the

*So in the original.

concurrent vote of four members of the board. The terms of sale on any such resale must contain all the provisions required by this act to be inserted in the original terms of sale. Such sale may be adjourned from time to time at the discretion of the board. All sales of such rights, privileges and franchises shall be made for a definite term of years, but the expiration of the term, if sold for a term of years, shall not impair any mortgage or other lien upon the property of such corporation or the rights of any creditor or creditors of such corporation; provided, however, that nothing herein contained shall be so construed as to extend the term for which such rights, privileges and franchises are sold.

§ 8. Resale of franchises on expiration of term; conditions; who may purchase.—Within one year, and not less than six months, prior to the expiration of any term for which such rights, privileges and franchises shall have been sold, said board shall proceed to resell the right to maintain and operate the said railway. Such sale shall be made in the manner prescribed for the original sale, and the board is empowered to make suitable provisions for securing to the corporation then operating such railway or railways suitable compensation for the railroad structure and appurtenances, and for any other property, real or personal, which the said corporation may own or of which it may be vested at the expiration of the term for which such rights, privileges and franchises were sold. Any corporation theretofore organized under the provisions of this act may be a purchaser on such resale; but if no such corporation be the purchaser, a new corporation shall be formed to maintain and operate said road in the manner prescribed for the organization of a corporation on the original sale except that the plans and specifications according to which said railway has been constructed need not be set out at large, but they may be referred to as forming part of the articles of association of said new corporation.

§ 9. Board may employ attorneys, engineers, etc.—The said board, by the concurrent vote of four members thereof may rent such offices and employ such engineers, attorneys and other persons, from time to time, as it may, in its discretion, deem necessary to the proper performance by it of its duties as in this act prescribed.

§ 10. Appropriation of money; application to court therefor; audit and payment; issue of revenue bonds.—The board of estimate and apportionment, or other board or public

body on which is imposed the duty and in which is vested the power of making appropriations of public moneys for the purposes of the city government in any city in which it is proposed to construct such railway or railways, shall from time to time, on requisition duly made by the board of rapid transit railroad commissioners, appropriate such sum or sums of money as may be requisite and necessary to properly enable it to do and perform or cause to be done and performed the duties herein prescribed. And such appropriation shall be made forthwith upon presentation of a requisition from the board of rapid transit railroad commissioners, which shall state the purposes for which such moneys are required by the said board. In case the said board of estimate and apportionment or such other board or public body fail to appropriate such amount as the board of rapid transit railroad commissioners deem requisite and necessary, the said board of rapid transit railroad commissioners may apply to the general term of the supreme court, in the department in which the railway is to be or has been constructed, on notice to the board of estimate and apportionment of such other board or public body aforesaid, to determine what amount shall be appropriated for the purposes required by this section, and the decision of said general term shall be final and conclusive. And no city shall be liable for any indebtedness incurred by the said board of rapid transit railroad commissioners in excess of such appropriation or appropriations. It shall be the duty of the auditor and comptroller of any such city, after such appropriations shall have been duly made, to audit and pay the proper expenditures of said commissioners upon vouchers therefor, to be furnished by the said commissioners, which payments shall be made in like manner as payments are now made by the auditor, comptroller or other public officers of claims against and demands upon such city; and for the purpose of providing funds with which to pay the said sums, the comptroller of said city is hereby authorized and directed to issue and sell revenue bonds of such city in anticipation of receipt of taxes and out of the proceeds of such bonds to make the payments in this section required to be made. And the amount necessary to pay the principal and interest of such bonds shall be included in the estimates of moneys necessary to be raised by taxation to carry on the business of said city, and shall be made a part of the tax levy for the year next following the year in which such appropriations are made.

Expenses; how repaid; terms of sale of franchises; compensation of commissioners.—All expenses of the said board of rapid transit railroad commissioners so incurred and paid by any city as in this section provided, and for which any city shall be liable, shall be repaid with interest by the bidder or bidders at the public sale of the rights, privileges and franchises as in this act provided whose bid shall be accepted by the board of rapid transit railroad commissioners, and the terms of such sale shall specify the time when such payment shall be made, as well as the amount thereof. The commissioners shall be paid a reasonable compensation for the duties performed by them in relation to each railway located by them under the provisions of this act. The amount of such compensation shall be determined by the general term of the supreme court in the department in which the railway is to be located upon application by the board of rapid transit railroad commissioners after notice to the mayor of the city in which the railway is to be built. The amount of such compensation shall be stated in the terms of sale and shall be paid by the purchaser.

§ 11. Twenty-five persons to organize corporation; articles to be approved, acknowledged and filed.—A corporation or corporations to construct and operate such rapid transit railway or railways, and to enjoy and exercise the rights, privileges and franchises in this act provided for shall be created and organized in the manner following: Articles of association shall be duly signed and acknowledged by not less than twenty five persons, and such articles shall set forth the name of the proposed corporation and duration thereof. Said articles must also state that they are made and filed under and in pursuance of this act for the purpose of taking and exercising the rights, privileges and franchises so purchased as aforesaid, according to the terms of sale; and such terms of sale and all plans and specifications must be made a part of said articles, annexed thereto and filed therewith. The said articles must also contain such other provisions as the said board may deem requisite and necessary, not inconsistent with the terms of sale or with this act. The said articles must be approved by said board, by the concurrent vote of four members, and its approval must be indorsed thereon and attested by the seal of the board and the signature of its presiding officer, and must then be filed in the office of the secretary of state, and a duly certified

copy, or a duplicate thereof, must be filed in the office of the clerk of the county in which such railway or railways are to be constructed.

Stock subscription books; to be fifty subscribers; percentages to be paid in cash; preferences.—Immediately after the articles of association shall have so made, approved and filed, the board of rapid transit railroad commissioners shall cause books of subscription to the capital stock of any such corporation to be opened, and shall give public notice of the opening of such books and of the time and place at which subscriptions will be received; and when the full amount of such capital stock shall have been subscribed by not less than fifty persons, and such percentage of the amount subscribed as may have been fixed by the board in the terms of sale shall have been paid in, in cash, to such bank or trust company as the board may select, the said board shall call a meeting of the subscribers for the purpose of organizing the corporation, serving upon or mailing to each subscriber a notice of such meeting at least ten days before the time appointed for holding the same; and the person or persons whose bid shall have been accepted by the said board of rapid transit railroad commissioners shall, if they elect to become subscribers to the capital stock of such corporation, be entitled to a preference for themselves and their associates in subscribing for, and in the allotment of the shares of capital stock of such corporation.

§ 12. Thirteen directors to be chosen; tenure of office; by-laws.—At such meeting of subscribers thirteen directors of the corporation shall be elected, each of whom shall be a holder in his own right of at least one hundred shares of the capital stock of the corporation, and the board of rapid transit railroad commissioners shall appoint the* inspectors of the first election. Each share of stock shall entitle the holder to one vote for each director. The directors so selected shall hold office for one year and until others are elected in their places. At such meeting by-laws must be adopted not inconsistent with this act, which by-laws shall, among other things, provide for:

1. The term of office of the directors elected at any subsequent meeting of stockholders, which term shall not exceed one year.

2. The manner of filling any vacancy which may occur in any office or in the board of directors.

* So in the original.

3. The time and place of the annual meeting of stockholders.
4. The manner of calling and holding special meetings of stockholders.
5. The number of stockholders who shall attend either in person or by proxy, at any stockholders meetings in order to constitute a quorum.
6. The officers of the corporation, the manner of their election by the directors, and their duties and powers, and among which officers there shall be included a president, a secretary and a treasurer.
7. The manner of electing or appointing inspectors of election.
8. The manner of amending the by-laws.

The by-laws may also provide for the forfeiture of shares for the non-payment of calls and for such other matters as may be deemed proper by the board of rapid transit railroad commissioners and they must be approved by a resolution of said board.

§ 13. Record or proceedings to be kept; certificate thereof; repayment or deposits to corporation and to purchasers of franchises.—Within ten days after the said subscribers meeting a record of the proceedings thereof, containing a copy of the subscription list, a copy of the by-laws adopted, and the names of directors chosen, shall be prepared and duly certified by the person presiding over, and person acting as secretary of said meeting. There shall be attached thereto a certificate of the board of rapid transit railroad commissioners, attested by its seal and the signature of its presiding officer, that said board has approved the by-laws adopted at the subscribers' meeting, and that said corporation has been organized in accordance with the provisions of this act. The said record and certificate shall be filed by said board in the office of the secretary of state, and a duly certified copy or duplicate thereof shall be filed in the office of the clerk of the county in which said railway or railways are to be built, and thereupon and upon the payment to the state treasurer of a tax of one-eighth of one per centum of the par value of the capital stock of said corporation, such corporation shall be deemed to be full organized. A copy of said certificate, duly certified by the secretary of state, or by the county clerk in whose office it is filed, shall be presumptive evidence of the due organization of such corporation in all courts and proceedings. Upon the production of the certified copy of said certificate, and upon the order of such corporation, the bank or trust company in which the per-

centage of subscriptions to the capital stock shall have been deposited, shall pay over to any such corporation the amount of such deposit, and said corporation shall repay to the purchaser or purchasers at the sale provided for in section seven of this act, the expenses paid by him or them to the city pursuant to the provisions of the terms of sale, with interest to the date of such repayment.

§ 14. Plans but not route may be changed; certificate and amount of changes to be filed.—The said board of rapid transit railroad commissioners, if, in their judgment, the public interest requires, may, at any time after the full organization of any such corporation, by the concurrent vote of four members authorize such corporation to alter or add to the detailed plans and specifications contained in its articles of association, provided the plans and specifications as so modified do not change the route or routes of said railway and be not inconsistent with the general plan of construction, adopted under the provisions of section four of this act, and provided also such modifications be first approved by a vote of two-thirds of the directors of said corporation present and voting at any special meeting duly called for the purpose, by written notice stating the nature of the business to be transacted at said meeting. When such authorization by the board of rapid transit railroad commissioners shall have been given, a certificate shall be prepared, and acknowledged by the president and a majority of the directors of said corporation, stating the nature of the modification, and that the same has been approved by the board of directors in the manner above set forth, to which certificate there shall be attached a copy of so much of the original plans and specifications as are to be affected by the modification, and also the plans and specifications as modified. There shall also be contained in such certificate a declaration of the approval of said board of rapid transit railroad commissioners, attested in the same manner as the certificate of full organization. The said certificate, plans and specifications shall then be filed in the office of the secretary of state, and a certified copy or duplicate thereof shall be filed in the office of the clerk in which the articles of association are filed. And thereupon said corporation shall be authorized to construct its railway or railways and appurtenances in accordance with such modified plans and specifications.

§ 15. Place of taxation of corporation.—Every corporation organized under this act shall have its principal office and be taxed on its property in the city where its railway or railways are situated.

§ 16. Directors to manage affairs of corporation; vacancies how filled; books to be exhibited.—The affairs of said corporation shall be managed by a board of thirteen directors, who shall be chosen annually, by a majority of the votes of the stockholders voting at such election, in such manner as may be prescribed in the by-laws of the corporation, and they may and shall continue to be directors until others are elected in their places. In the election of directors, each stockholder shall be entitled to one vote for each share of stock held by him. Vacancies in the board of directors shall be filled in such manner as shall be prescribed by the by-laws of the corporation. No person shall be a director unless he shall be a stockholder owning one hundred shares of stock absolutely in his own right, and qualified to vote for directors at the election at which he shall be chosen. At every election of directors the books and papers of such corporation shall be exhibited to the meeting, provided a majority of the stockholders present shall require it.

§ 17. Directors may require payment of subscriptions in such installments as they deem proper.—The directors shall require the subscribers to the capital stock of the company to pay the amount by them respectively subscribed in money at such times and in such installments as they may deem proper, not inconsistent with the by-laws and the articles of association.

§ 18. Stockholders personally liable to extent of their stock and to laborers; action therefor to be prescribed by notice; recovery over against corporation.—Each stockholder of any corporation formed under this act shall be individually liable to the creditors of such corporation, to an amount equal to the amount unpaid on the stock held by him, for all the debts and liabilities of such corporation, until the whole amount of the capital stock so held by him shall have been paid to the corporation; and all the stockholders of any such corporation shall be jointly and severally liable for the debts due or owing to any of its laborers and servants, other than contracts, for personal services, for thirty days' service performed for such corporation, but shall not be liable to an action therefor before an execution or executions shall be returned unsatisfied in whole or in part against

the corporation, and the amount due on such execution or executions shall be the amount recoverable, with costs, against such stockholders; before such laborer or servant shall charge such stockholder for such thirty days' service, he shall give him notice in writing within twenty days after the performance of such service, that he intends so to hold him liable, and he shall commence such action therefor within thirty days after the return of such execution unsatisfied, as above mentioned; and every such stockholder against whom any such recovery by such laborer or servant shall have been had, shall have a right to recover the same of the other stockholders in said corporation, in ratable proportion to the amount of the stock they shall respectively hold.

§ 19. Stock; how transferred.—The stock of every corporation formed under this act shall be deemed personal estate, and shall be transferable in the manner prescribed by the by-laws of the company, but no share shall be transferable until all previous calls thereon shall have been fully paid in.

§ 20. Capital; how increased or reduced; stockholders to approve; statement to be approved, attested and filed.—Any corporation formed under this act may increase or reduce its capital stock from time to time upon obtaining the approval of the board of rapid transit railroad commissioners by a concurrent vote of four members thereof. Such increase or reduction must be approved by a vote in person, or by proxy, of two-thirds in amount of all the stockholders of the corporation, at a meeting of such stockholders called by the directors of the corporation for that purpose, by a notice in writing to each stockholder, to be served on him in the manner provided for service of the notice of the subscribers' meetings provided for in section eleven of this act. Such notice shall state the time and place of the meeting, and its object, and the amount to which it is proposed to increase or reduce the capital stock. A statement of the increase or reduction shall be signed by the president and a majority of the directors and shall be filed in the office of the secretary of state and of the clerk of the county in which the original articles of association are filed. There must be attached thereto a certificate of the approval of said board of rapid transit railroad commissioners attested in the same manner as the certificate of full organization.

§ 21. Executor, trustee, or pledgee holding stock not liable as stockholder; pledgor and owners liable.—No per-

son holding stock in any such corporation, as executor, administrator, guardian or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as a stockholder of such corporation; but the person pledging such stock shall be considered as holding the same, and shall be liable as a stockholder accordingly; and the estate and funds in the hands of such executor, administrator, guardian or trustee shall be liable in like manner, and to the same extent, as the testator or intestate or the ward or person interested in such trust fund would have been if he had been living and competent to act, and held the same stock in his own name.

§ 22. Corporation liable for debts of laborers against contractors; limitation of actions therefor.—As often as any contractor for the construction of any part of a railway, which is in progress of construction under the provisions of this act, shall be indebted to any laborer for thirty or any less number of days' labor performed in constructing said road, such laborer may give notice of such indebtedness to said corporation in the manner herein provided; and said corporation shall thereupon become liable to pay such laborer the amount so due him for such labor, and an action may be maintained against said corporation therefor. Such notice shall be given by said laborer to said corporation within twenty days after the performance of the number of days' labor for which the claim is made. Such notice shall be in writing, and shall state the amount and number of days' labor, and the time when the same was performed and the name of the contractor from whom due, and shall be signed by such laborer or his attorney, and shall be served on an engineer, agent or superintendent employed by such corporation having charge of the section of the road on which such labor was performed personally, or by leaving the same at the office or usual place of business of such engineer, agent or superintendent with some person of suitable age. But no action shall be maintained against any corporation under the provisions of this section, unless the same be commenced within thirty days after notice is given to such company by such laborer as above provided.

§ 23. Corporation may hold necessary real estate; how acquired; proceedings for disagreement with owners.—Every such corporation shall have the right to acquire and hold such real estate or easement or other interest therein, or rights

appertaining thereto, as may be necessary to enable it to construct, maintain and operate the said railway, or railways, and such as may be necessary for stations, depots, engine-house, car-houses, machine-shops, and other appurtenances specified in the articles of association; and in case any such corporation cannot agree with the owner or owners of such property it shall have the right to acquire title to the same in pursuance of the terms of and in the manner prescribed in title one of chapter twenty-three of the Code of Civil Procedure, known as the condemnation law.

§ 24. Powers of corporations formed under this act.

Every corporation formed under act shall have power:

1. To take and hold voluntary grant, or necessary real and personal property.—To take and hold such voluntary grants of real estate and other property as shall be made to it, to aid in the construction, maintenance and accommodation of its railway or railways, but the real estate received by voluntary grant shall be held and used for the purposes of such grant only.

2. To purchase and hold property necessary to construction and operation of road.—To purchase, hold and use all such real estate and other property as may be necessary for the construction and maintenance of its railway or railways and the station and other accommodations necessary to accomplish the objects of its incorporation; but nothing herein contained shall be held as repealing or in any way affecting the act entitled "An act authorizing the construction of railroads upon Indian lands," passed May twelve, eighteen hundred and thirty-six.

3. To cross and unite with other roads; commissions to fix compensation, crossings and connections in case of disagreement.—To cross, interest, join and unite its railway or railways with any other railway before constructed at any point on its route, and upon the grounds of such other railway company, with the necessary turnouts, sidings and switches and other conveniences in furtherance of the objects of its connections. And every corporation whose railway is or shall be hereafter intersected by any railway shall unite with the owners of such new railway in forming such intersections and connections, and grant the facilities aforesaid; and if the two corporations cannot agree upon the amount of compensation to be made therefor the same shall be ascertained and determined by commissioners to be appointed by the court, in the manner provided in this act in respect to ac-

quiring title to real estate. And if the two corporations cannot agree upon the points and manner of such crossings and connections, the board of rapid transit railroad commissioners shall determine the same on the application of either corporation.

4. To transport persons and property by motor other than animal power.—To take and convey persons and property on its railway or railways by the power or force of steam, or by motor any other than animal power, and to receive compensation therefor not inconsistent with the provisions of this act and the terms of sale under which the said corporation shall have acquired its rights, privileges and franchises.

5. To construct and operate railroads in and underneath streets; to excavate; must restore streets; use of parks, etc., limited.—To enter upon and underneath the several streets, avenues, public places and lands designated by the said board of rapid transit railroad commissioners, and enter into and upon the soil of the same; to construct, maintain, operate and use, in accordance with the plan adopted by said board a railway or railways upon the route or routes and to the points decided upon, and to secure the necessary foundations and erect the columns, piers and other structures which may be required to secure safety and stability in the construction and maintenance of the railways constructed upon the plan adopted by the said board and which may be necessary for operating the same; except that nothing in this act shall authorize the construction of a railway crossing the track of any steam railway now in actual operation at the grade thereof, or the erection of piers or supports for any elevated railway upon a railway track now actually in use in any street or avenue; and it shall be lawful to make such excavations and openings along the route through which such railway or railways shall be constructed as shall be necessary from time to time; in all cases the surface of said streets around such foundations, piers and columns shall be restored to the condition in which they were before such excavations were made, as near as may be and under the direction of the proper local authorities, and in all cases the use of the streets, avenues, places and lands designated by the said board, and the right of way through the same, for the purpose of a railway or railways, as herein authorized and provided, shall be considered, and is hereby declared, to be a public use, consistent with the uses for which the roads, streets, avenues and public

places are publicly held; but no such corporation shall have the right to acquire the use or occupancy of public parks or squares in such county, or the use or occupancy of any of the streets or avenues, except such as may have been designated for the route or routes of such railway, and except such temporary privileges as the proper authorities may grant to such corporations to facilitate such construction.

6. To borrow necessary money, and issue bonds therefor.

—From time to time to borrow such sums of money as may be necessary for completing and finishing or operating their railroads, and to issue and dispose of their bonds for any amount so borrowed, but the amount of such bonds outstanding at any one time shall not exceed the amount limited by the articles of association.

§ 25. Employes must wear badges.—Every conductor, baggage master, engineer, brakeman or other servant of any railroad corporation employed in a passenger train, or at stations for passengers, shall wear upon his hat or cap a badge, which shall indicate his office, and the initial letter of the style of the corporation by which he is employed. No conductor or collector, without such badge, shall be entitled to demand or receive from any passenger any fare or ticket, or to exercise any of the powers of his office; and no officer or servant without such badge shall have authority to meddle or interfere with any passenger, his baggage or property.

§ 26. Corporation must carry mails; compensation; must furnish extra, or fast mail train; compensation.—

Any such corporation shall, when applied to by the postmaster-general, convey the mails of the United States on their road or roads respectively; and in case the parties can not agree as to the rate of transportation therefor, and as to the time, rate of speed, manner and conditions of carrying the same, it shall be lawful for the governor of this state to appoint three commissioners, who, or a majority of them, after fifteen days' notice in writing of the time and place of meeting to the corporation, shall determine and fix the prices, terms and conditions aforesaid; but such price shall not be less for carrying said mails in the regular passenger trains than the amount which such corporation would receive as freight on a like weight of merchandise transported in their merchandise trains, and a fair compensation for the post-office car. And in

case the postmaster-general shall require the mail to be carried at other hours, or at a higher speed than the passenger trains are run, the corporation shall furnish an extra train for the mail, and be allowed an extra compensation for the expenses and wear and tear thereof, and for the service to be fixed as aforesaid.

§ 27. **Ejection of passenger refusing to pay fare.**—If any passenger shall refuse to pay his fare, it shall be lawful for the conductor of the train and the servants of the corporation to put him and his baggage out of the cars, using no unnecessary force, at any usual stopping place, on stopping the train.

§ 28. **Trains to be run on schedule time; passengers and freight to be transported and discharged at reasonable times and places at legal rates.**—Every such corporation shall start and run its cars for the transportation of passengers and property at regular times, to be fixed by public notice; and shall furnish sufficient accommodations for the transportation of all such passengers and property as shall, within a reasonable time previous thereto, be offered for transportation at the place of starting and the junction of other railroads, and at usual stopping places established for receiving and discharging way passengers and freight for that train; and shall take, transport and discharge such passengers and property at, from and to such places, on the due payment of the freight or fare legally authorized therefor; and shall be liable to the party aggrieved in an action for damages, for any neglect or refusal in the premises.

§ 29. **Intoxication of conductor or engineer a misdemeanor.**—If any person shall, while in charge of a locomotive engine running upon the railway of any such corporation, or while acting as the conductor of a car or train of cars on any such railroad, be intoxicated, he shall be deemed guilty of a misdemeanor.

§ 30. **Willful injury to property a misdemeanor; and offender liable for damages.**—If any person or persons shall willfully do, or cause to be done, any act or acts whatever, whereby any building, construction or work of any railway corporation, or any engine, machine or structure, or any matter or thing appertaining to the same, shall be stopped, obstructed, impaired, weakened, injured or destroyed, the person or persons so offending shall be guilty of a misdemeanor, and shall forfeit and pay to the said corporation treble the amount of damages sustained in consequence of such offense.

§ 31. Legislature may dissolve corporation.—The legislature may, at any time, annul or dissolve any corporation formed under this act; but such dissolution shall not take away or impair any remedy given against any such corporation, its stockholders or officers, for any liability which shall have been previously incurred.

§ 32. Railroads may connect with other routes and ferries and extend facilities; Battery Park excepted; conditions and compensation.—The said board of rapid transit railroad commissioners may also from time to time, upon application of any railway corporation owning or actually operating a railroad wholly or in part within the limits of any city in which the said board has power to act, if in the judgment of said board the public interests so demand, by the concurrent vote of all the members of said board fix and determine the route or routes by which any such railway company may connect with other steam railways, or the stations thereof, or with steam ferries, or may extend its lines within said city and may authorize any such railway company to lay an additional track or tracks on, above, under or contiguous to a portion or the whole of the route or routes of its railway or railways within said city and to acquire terminal or other facilities necessary for the accomodation of the traveling public on any street or place except the place now known as Battery park on which said railway shall be located; and the said board shall fix and determine the locations and plans of construction of the railways upon such route or routes and of such tracks and facilities, the times within which they shall be respectively constructed, the compensation to be made therefor to the city by said railway company, and such other terms, conditions and requirements as to the said board may appear just and proper.

Certificate in regard to connection, etc., to be attested and recorded; powers thereupon secured.—A certificate shall be prepared by the said board, attested by its seal and the signatures of its presiding officer, setting forth in detail the action taken by the said board with respect to such connecting or extended route or routes and such tracks or facilities, and the terms, conditions and requirements aforesaid. Such certificates shall be delivered to said railway corporation upon the receipt by said board of a written acceptance of said terms, conditions and requirements, duly executed by said railway corporation, so as to entitle it to be

recorded. The said certificate shall be filed in the office of the secretary of state and a duly certified copy thereof shall be filed in the office of the clerk of the county in which the railways of said railway corporation are situated, and thereupon, and upon fulfillment by such railway corporation, so far as it relates to such connections, additional track or tracks, or facilities, of such of the requirements and conditions as are necessary to be fulfilled in such cases, under section eighteen of article three of the constitution of this state, and upon fulfillment by such railway corporation of such other terms, conditions and requirements enumerated in said certificate, as the said board may require to be fulfilled as a condition precedent to commencing said work, said railway company shall in such cases possess in addition to existing franchises all the powers conferred by this act upon corporations specially formed thereunder, with respect to its railways authorized to be constructed as aforesaid, and when any route or routes, additional track or tracks, or terminal or other facilities, shall be so fixed and determined, and a certificate as aforesaid shall have been duly filed, such railway company may construct the same with all the rights, and with like effect as though the same had been a part of the original route of its railway then in actual operation.

Consents of authorities and property owners to be obtained before connecting routes ; disagreements, how settled.—But the construction and operation of such connections, extensions, additional track or tracks, or facilities, are hereby authorized only upon the condition that the consent of the owners of one-half in value of the property bounded on, and the consent also of the local authorities having the control of that portion of a street or highway upon, above or under which it is proposed to construct or operate the same, be first obtained, or in case the consent of such property owners can not be obtained, the general term of the supreme court in the district in which they are proposed to be constructed, may, upon application, in the same manner and on the same notice specified in section five of this act, appoint three commissioners, who shall determine after a hearing of all parties interested, whether the same ought to be constructed or operated, and their determination, confirmed by the court, may be taken in lieu of the consent of the property owners.

§ 33. Corporations may remove surface railroads ; must restore same and pay damages occasioned ; cannot use tracks of horse railway.—Wherever the route selected by the said board

of rapid transit railroad commissioners for the construction of such railway shall intersect, cross or coincide with any railway track or tracks occupying the surface of any street or avenues, any corporation organized under this act is hereby authorized, for the purpose of constructing the said work, to remove the track or tracks of any such surface railway or railways, but the same shall be done in such manner as to interfere as little as possible with the practical operation or workings of such such surface railway or railways, and upon the construction of such railway built under and in conformity with the provisions of this act, where such removals or changes have been made, the same shall be restored, as nearly as may be, to the condition in which they were previous to the construction of any such railway built under the provisions of this act, and any damage which such company or companies may sustain, shall be ascertained by a commission to be appointed the same as in the case where lands are taken for the purposes of a railway route or routes as hereinbefore provided in this act. All such removals and restorations shall be made at the proper cost and charge of such corporation as may have entered upon the occupancy of such street or streets. Nothing contained in this act shall authorize any corporation formed thereunder to use the tracks of any horse railway.

§ 34. Construction of this act; does not affect L. of 1875, ch. 606, or art. 5 of ch. 565 of L. of 1890, except, etc.; not to affect or impair certain rights of corporations, etc.; nor affect certain acts, except, etc.—This act shall not be construed to repeal or in any manner affect chapter six hundred and six of the laws of eighteen hundred and seventy-five, entitled "An act to further provide for the construction and operation of a steam railway or railways in the counties of this state," or the acts amendatory thereof or supplementary thereto, or article five of chapter five hundred and sixty-five of the laws of eighteen hundred and ninety, known as the railroad law, except so far as the said acts, or either of them, would if this act had not been passed, authorize the appointment hereafter of any commissioners applied for as provided in section one of said act of eighteen hundred and seventy-five, or in section one hundred and twenty of said act of eighteen hundred and ninety, in any city or cities containing a population of over one million inhabitants, according to the last preceding national or state census or authorize

any commissioners already appointed pursuant to the provisions of such act or acts in any such city or cities, to fix, determine or locate any new route or routes, pursuant to the provisions of either of said acts. This act shall not be construed in any manner to effect the exercise or enjoyment at any time, and from time to time hereafter, of any right or rights heretofore acquired, exercised or enjoyed by any corporation heretofore duly incorporated and organized or deriving powers and rights under the laws of this state. This act shall not affect or impair the exercise or enjoyment of any right or rights now possessed or heretofore acquired or heretofore authorized to be acquired, exercised or enjoyed by any street surface railroad corporation, except as herein otherwise expressly provided, and this act shall not be construed to repeal or in any manner affect chapter one hundred and forty of the laws of eighteen hundred and fifty, entitled "An act to authorize the formation of railroad corporations, and to regulate the same," or either of the several acts amendatory thereof or supplementary thereto. This act shall not be construed to repeal or in any manner affect chapter five hundred and sixty-five of the laws of eighteen hundred and ninety, known as the railroad law, except hereinabove expressly provided, or except so far as the provisions of the same conflict with the provisions of this act.

§ 35. No surface railroads to be constructed in New York city under this act.—No railroad shall be constructed or operated upon the surface of any street, avenue or highway in the city of New York under the provisions or authority of this act.

§ 36. Repeal of inconsistent acts.—All acts and parts of acts local or general inconsistent with this act are hereby repealed.

§ 37. When to take effect.—This act shall take effect immediately.

The authority for the passage of the general railroad acts. New York Constitution, article 8, section 1.—Corporations may be formed under general laws, but shall not be credited by special act, except for municipal purposes and in cases where, in the judgment of the legislature, the objects of the corporation cannot be attained under general laws. All general

laws and special acts passed pursuant to this section may be altered from time to time or repealed.¹

Dues from corporations.—Dues from corporations shall be secured by such individual liability of the corporators and other means as may be prescribed by law. Id., § 2.²

Definition of corporations ; right to sue and be sued.—The term corporations as used in this article, shall be construed to include all associations and joint-stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships. And all corporations shall have the right to sue and shall be subject to be sued in all courts in like cases as natural persons. Id., § 3.³

¹ 27 Hun, 483, 489; 54 Hun, 606; 40 Hun, 31; 45 Hun, 545; 19 Abb. N. C., 364, n.; 113 N. Y., 317; 49 N. Y., 458; 26 N. Y., 467; 70 N. Y., 327; 9 N. Y., 100; 15 Barb., 663; 20 Barb., 119; 26 Barb., 657.

² 39 Barb., 356; 26 Barb., 657; 36 Hun, 627.

³ 10 Abb. Pr. N. S., 186; 31 Hun, 516; 32 Hun, 317; 18 N. Y., 217.

Notes of Decisions Applicable to Rapid Transit Railroads.

- SECTION**
1. Authority to appropriate lands for railroad purposes.
 2. The extent to which land may be appropriated; the corporation is generally the judge as to amount of land needed by it.
 3. Lands appropriated for one public purpose cannot be diverted for a different public use.
 4. The estate required by railroad corporations; duration of easement.
 5. Proceedings to condemn lands; appointment and determination of commissioners.
 6. The petition to institute, and proceedings to condemn lands; who may institute; notices.
 7. Powers of commissioners; appraisal of damages.
 8. The commissioners' report; confirmation; powers of the court; appeal.
 9. Setting aside appraisal of commissioners.
 10. Costs in condemnation proceedings.
 11. The power of a railroad company to mortgage its franchises.
 12. Penalties against stockholders.
 13. The General Railroad Law does not authorize elevated railroads in streets.
 14. Injunctions against railroads.
 15. Ejection of passenger from trains.
 16. Personal liability of stockholder for debts.
 17. Liability of corporation to employees of contractors.
 18. Negligence of elevated railroads.
 19. The measure of damages for appropriating lands.
 20. Measure of damages occasioned by elevated railroads.
 21. Miscellaneous.

§ 1. AUTHORITY TO APPROPRIATE LANDS FOR RAILROAD PURPOSES.

An elevated railroad is inconsistent with the ordinary uses of a public street, and is an appropriation of private property for public use. *Story v. N. Y. El. R. R. Co.*, 90 N. Y., 122; 11 Abb. N. C., 236 n; *Williams v. Brooklyn El. Ry. Co.*, 126 N. Y., 96.

The use and occupation of streets by railroads is an appropriation thereof for a new and different purpose from that originally contemplated, and gives the owners a right to compensation. This rule applies to horse or steam railroads in the streets of large cities. Such use is an appropriation and imposes a new and additional burden upon the land. *Craig v. Roch., C. and B. R. R. Co.*, 39 N. Y., 404; *aff'd* 39 Barb., 494.

Allowing a street in a city to be used for a railroad track, either upon its surface or underneath, is not a misappropriation of it, provided such use

does not interfere with the rights of the public therein. The temporary inconveniences while excavating is *damnum absque injuria* and damages cannot be recovered therefor. *Plant v. Long I. R. R. Co.*, 10 Barb., 26; *Adams v. Sav. & Wash. R. R. Co.*, 11 id., 414 (reversed on other grounds, 10 N. Y., 328). See also, as to damages caused by change of grade of streets for like purpose. *Chapman & Alb. & Sch. R. R. Co.*, 10 Barb., 360.

Injury to individuals by construction of a railroad in a street, the title to which is held by the state is *damnum absque injuria*, and does not entitle one to damages against the company. *Corey v. Buf., C. & N. Y. R. R. Co.*, 23 Barb., 482; 4 N. Y., 195; 6 id., 522.

The construction of railways may be authorized, without compensation to persons whose property is not actually taken or used, although such persons may sustain consequential or indirect damages by the construction and operation of such railroads. *Arnold v. H. R. R. Co.*, 49 Barb., 108, citing 4 Comst., 195; 2 Seld., 522; 23 N. Y., 42; 27 id., 193; 23 Barb., 482; 21 id., 617; 26 id., 133; 10 id., 26; 21 Conn., 294.

Railroads are quasi public works, for the use and benefit of the public. The legislature authorizes the taking of private property for them, by making proper compensation. *Beekman v. Sar. & Sch. R. R. Co.*, 3 Paige, 45; 18 Wend., 9; 9 N. Y., 100.

Equity will not interfere to restrain the construction of a railway, authorized by the legislature, on the ground that one, whose property is not taken or appropriated, will sustain indirect or consequential damages by its construction and operation. *Barnes v. South Side R. R. Co.*, 2 Abb. Pr. N. S., 415.

§ 2. THE EXTENT TO WHICH LANDS MAY BE APPROPRIATED; THE CORPORATION IS GENERALLY THE JUDGE AS TO THE AMOUNT OF LAND NEEDED BY IT.

The power of a railroad to take land is limited by the reasonable necessities of the corporation in the discharge of its duty to the public. Passenger and freight depots, storehouses and other buildings are necessities to the operation of the road. *N. Y. & Harlem R. R. Co. v. Kip.*, 46 N. Y., 546, 553; aff'g 11 Abb. Pr., N. S., 90; 53 id., 574; 63 id., 333; 77 id., 248.

Lands for present use, not for prospective or conjectural increase of business, can be taken. To justify the taking of private property, there must be shown a *clear legal right*. The court is to determine the necessity and extent to which lands may be appropriated. *Ren. & Sar. R. R. Co. v. Davis*, 43 N. Y., 137; *Re N. Y. C. R. R. Co.*, 66 N. Y., 407; aff'g, 5 Hun, 86; 112 N. Y., 396.

That there are other suitable and purchasable lands in the same vicinity is not sufficient grounds to refuse their application. The legislature invested the corporation with discretion in the selection of necessary lands, and courts cannot interfere. *N. Y. & Harlem R. R. Co. v. Kip*, 46 N. Y., 546; *N. Y. C., etc., R. R. Co. v. Met. G. L. Co.*, 63 N. Y., 326; *Re N. Y. C., etc., R. R. Co.*, 77 N. Y., 248; *L. 1869, c. 237*; 46 N. Y., 546; 53 id., 574.

Lands not actually crossed by railroad may be taken by it, if necessary to enable the road to discharge its duty to the public. *N. Y., Lack., etc., R. R. Co. v. Scheu*, 33 Hun, 148; aff'd, 98 N. Y., 664.

The statutes authorize condemnation of lands of the state as well as of individuals. The necessity for use of the land must clearly appear. *Re S. I.*

R. T. Co., 103 N. Y., 251. The land may be taken, even though the corporation may have some ulterior or private object to attain. *Id.*

The opinion of officers of a railroad corporation as to amount of land needed for a depot are, if *bona fide*, entitled to great weight. N. Y. W. S., etc., R. R. Co. v. Townsend, 17 W. Dig., 469.

§ 3. LANDS APPROPRIATED FOR ONE PUBLIC PURPOSE CANNOT BE DIVERTED FOR A DIFFERENT PUBLIC USE.

Lands lawfully appropriated by one railroad for depot purposes, cannot be appropriated to different public purpose without legislative sanction. L. 1853, c. 62, sec. 1. As to the crossing of railroad tracks by railroads being in applicable to such a case (24 N. Y., 345), P. P. & C. I. R. R. Co. v. Williamson, 91 N. Y., 552; rev'g, 24 Hun, 216.

Corporations may not appropriate lands already dedicated to a different public use. Kip v. N. Y. C. & H. R. R. Co., 67 N. Y., 227; aff'g 6 Hun, 24; 53 N. Y., 574; 68 id., 171; 45 id., 234; 77 N. Y., 248.

A short and temporary use of land for a switch, used by a customer, but not needed by the company, does not preclude the taking of the land by another company. Re R. H., etc., R. R. Co., 110 N. Y., 119; aff'g, 19 Abb. N. C., 421.

§ 4. THE ESTATE IN LANDS ACQUIRED BY RAILROAD CORPORATIONS; DURATION OF EASEMENT.

An easement may continue so long as the land is used for railroad purposes, although beyond the charter limit of the corporation, and it is consolidated with another company. Terry v. N. Y. C., etc., R. R. Co., 67 How. Pr., 439, citing many cases.

The company does not obtain an absolute fee, but simply an easement. Wash. Cemetery v. P. P. & C. I. R. R. Co., 68 N. Y., 630; aff'g, 7 Hun, 655; 60 N. Y., 242; 68 id., 1. The company may have a fee simple for purpose of alienation, though only a determinable fee for the purpose of enjoyment. Buf. P. L. Co. v. N. Y., L. E. & W. R. R. Co., 10 Abb. N. C., 107.

But where a company obtained land under compulsory proceedings to condemn, after failure to agree with owner, it was held that the company obtained thereby the right to hold the lands taken as long as used for railroad purposes, and not a mere easement limited by the prescribed term of corporate existence. Miner v. N. Y. C., etc., R. R. Co., 46 Hun, 612, citing many cases.

An estate in lands which a railroad company is authorized by statute to acquire, cannot be enlarged without additional compensation to the owner. Miner v. N. Y. C., etc., R. R. Co., 46 Hun, 612, citing many cases, and lands appropriated for a railroad company for the purposes contemplated by its charter, cannot be used for street or highway purposes without payment of additional compensation to the owner. Strong v. Brooklyn, 68 N. Y., 1.

Under rapid transit act (L. 1875, c. 606, sec. 17), a company which has two lines crossing each other may appropriate a corner lot in order to connect by a curve. Re Union El. R. R. Co., 22 St. R., 842. So a company may condemn lands, under rapid transit act, to effect a junction between two companies prescribed by commissioners and operated by same company. Re U. El. Co. of Brooklyn, 113 N. Y., 275; aff'g 17 St. R., 306.

The title to land taken and appropriated by the state does not vest in it, until the amount of damages has been appraised. Ballou v. Ballou, 78 N. Y., 327.

Neither Laws of 1867, c. 489; L. 1875, c. 606, nor L. 1875, c. 595, sec. 4, authorizing an elevated railroad in Greenwich street, permit the erection of stations in or over the streets which intersect the line of the railroad. *Mattlage v. N. Y. El. R. R. Co.*, 67 How. Pr., 232.

§ 5. PROCEEDINGS TO CONDEMN LAND; APPOINTMENT AND DETERMINATION OF COMMISSIONERS.

Commissioners to condemn lands cannot be appointed unless the company is unable to agree with the owners for the purchase. *Ren. & Sar. R. R. Co. v. Davis*, 43 N. Y., 137. See 63 N. Y., 326; aff'g 5 Hun, 201; 67 id., 371; aff'g 8 Hun, 30; 71 N. Y., 315, 318; rev'g 10 Hun, 49.

The legislature is empowered to delegate to commissioners the determination of the route of a railway, and method of construction in details, instead of prescribing them by statute. *Gilbert El. Ry. Co. v. Anderson*, 3 Abb. N. C., 434 (Ct. of App.); aff'g 9 Hun, 303.

Consents of property owners to construct railways must be of one-half of each street taken by itself, not one-half of the property along the whole route. *Hilton v. 34th St. Ry. Co.*, 1 How. Pr. N. S., 453 (See cases cited.)

Appointment of commissioners may be made on application of company; the mayor's commissions need not apply. *Re Kings Co. El. Ry. Co.*, 18 Hun, 378.

§ 6. THE PETITION TO INSTITUTE AND PROCEEDINGS TO CONDEMN LAND; WHO MAY INSTITUTE; NOTICES.

A petition by a railroad company setting forth that it has not been able to agree with the owner for the purchase of the land, etc., is sufficient. *Re Suburban R. T. Co.*, 38 Hun, 553. The petition may be amended, if defective. *Re N. Y. & W. S., etc., R. R. Co.*, 89 N. Y., 453; 55 Hun, 196.

The burden is on property owners to show that no offer has been made, etc. *Re Man. Ry. Co.*, 18 St. R.; 2 N. Y. S., 278.

Notice of proceedings to condemn must be given. *Re N. F., etc., Ry. Co.*, 46 Hun, 94. But not necessary by publication by elevated railroad, under L. 1876, c. 198, sec. 2. *Re Met. El. Ry. Co.*, 18 St. R., 134; 2 N. Y. S., 278.

Company whose road is leased to another and foreign corporation, may institute proceedings to condemn (67 N. Y., 227). *N. Y. Lack, etc., R. R. Co. v. U. S. Co.*, 99 N. Y., 12, 22; aff'g 35 Hun, 220. And see 33 id., 275; 4 id., 381.

Power under L. 1850, c. 140, to condemn land is conferred upon the New York and the Metropolitan Elevated railroad companies. *Re Met. El. Co.*, 18 St. R., 134; 2 N. Y. S., 278.

The N. Y. Elevated R. R. has authority under the rapid transit act, to acquire necessary property and easements, upon payment of compensation. *Id.*, 70 N. Y., 327.

The provisions (L. 1875, ch. 606), requiring consent of land owners do not apply to pre-existing corporations already having a grant of franchises. *Gil. El. Ry. Co. v. Anderson*, 3 Abb. N. C., 434.

An elevated railroad may institute proceedings to condemn land of an abutter. After the road has been built; the past use of the easement being considered a continuing trespass. *Met. El. Ry. Co. v. Dominick*, 55 Hun, 198.

The provisions as to hearings before commissioners, and personal notice to all persons interested being impracticable, the commissions may prescribe

method of notice by posting and publication. 18 N. Y., 199; 21 id., 595; 48 id., 313; 58 id., 143.

Practice on proceedings to condemn lands, stated in *Re N. Y., W. S. etc., R. R. Co.*, 64 How. Pr., 216. See 15 St. R., 977, aff'd 111 N. Y., 518.

Verification of petition to condemn lands, see *N. Y. L. etc., R. R. Co. v. Scheu*, 33 Hun, 148.

Parties to proceedings to condemn, see 26 Hun, 194; 15 St. R., 546. 18 St. R., 134.

Taking issue and trial, see 99 N. Y., 12, aff'g 35 Hun, 220; 20 W. Dig., 15; 38 Hun, 553; 29 id., 1.

§ 7. POWERS OF COMMISSIONERS; APPRAISEMENT OF DAMAGES.

The authority of the commissioners under the rapid transit act being wholly statutory it must be closely followed; a failure to comply therewith will prevent their determination from being sustained. *Re N. Y. Cable Ry. Co.*, 40 Hun, 1; 112 N. Y., 396.

A route designated by a railroad company, and a map thereof filed and notice given to interested parties, no change being made, gives the company the exclusive right to that line against corporations and others. *R. H., etc., R. R. Co. v. N. Y., L. E., etc., R. R. Co.*, 110 N. Y., 128, aff'd 44 Hun, 206.

Disputes as to routes between contesting railroads must be settled under provisions of L. 1850, c. 140, § 28. Sec. 22 does not authorize proceedings by one railroad to change the line of another railroad desiring to cross its tracks. *Re N. Y., L. E. & W. R. R. Co.*, 110 N. Y., 374, aff'g 44 Hun, 215.

Intersection of railroads. The question as to the place where one railroad may intersect another is triable before commissioners, and their decision is reviewable. *Re Lehigh V. Ry. Co.*, 93 N. Y., 639.

Commissioners to condemn lands are not to review decision of mayor's commissioners, as to most feasible route. *Re N. Y. El. Ry. Co.*, 70 N. Y., 327, 359; aff'g 7 Hun, 339.

The mayor's commissioners can organize but a single corporation to operate all the railways decided upon. *Peo. v. Hoe*, 20 Hun, 26.

See as to operation of railways by existing corporations, *Brooklyn Steam Transit Co. v. Brooklyn*, 78 N. Y., 524.

§ 8. THE COMMISSIONER'S REPORT; CONFIRMATION; POWERS OF THE COURT; APPEAL.

The report of the supreme court commissioners, taken in lieu of the consents of property owners, may be confirmed, though consent of local authorities not yet obtained. Latter consent need only be obtained before the road is constructed. *Re Kings Co. El. Ry. Co.*, 18 Hun, 378.

A report of commissioners in favor of constructing an elevated railway, after failure to obtain consents, not providing for compensation to property owners, should not be confirmed. *Re E. R. B. & R. T. Co.*, 10 Abb. N. C., 490.

The report of mayor's commissioners may be in the alternative or on condition, as fixing the route on either or both of two streets. Their determination is permissive and not mandatory. *Re Kings Co. El. Ry. Co.*, 18 Hun, 378.

The commissioners' report is inoperative until confirmed. The court has original jurisdiction to determine the sufficiency of the facts to justify the determination. *Re Kings Co. El. Ry. Co.*, 82 N. Y., 95.

Confirmation of Report. The mayor's commissioners located a route, and on refusal of consents by property owners, the court appointed commissioners who reported in favor of construction and adoption of the route. On motion to confirm report of latter commissioners, it was held that the court ought to consider the whole case upon its merits, and if the injury to private property would overbalance possible benefits to the public, the court should withhold confirmation; and it so appearing in this case, the court refused to confirm the report. *Re Kings Co. El. Ry. Co.*, 20 Hun, 217; appeal dismissed, 82 N. Y., 95. See 18 Hun, 378.

Under L. 1850, c. 140, sec. 18, the court may inquire into the regularity and fairness of the commissioners' report, though a second report is conclusive. *Re Buf., N. Y., etc., R. R. Co.*, 32 Hun, 289. Appraisal will not be disturbed for technical errors in admission or rejection of evidence unless they are led to unjust results; or unless there was a disregard of legal principles. *N. Y., W. S., etc., R. R. Co. v. Jennett*, 37 Hun, 317. Nor because of inadequate compensation. *Re S. I. R. T. Co.*, 47 id., 396. Where necessity is shown and the company acted in good faith, courts will not interfere. *N. Y. L., etc., R. R. Co. v. U. S. Co.*, 35 Hun, 220.

A determination by the supreme court, on application to condemn lands, determines the questions of legal incorporation and legal capacity of the corporation, and estops the abutters from raising that question afterwards. *Re Union El. R. R. Co.*, 112 N. Y., 61; aff'g 17 N. Y. St. R., 630.

Appeal to General Term from order of special term confirming the report of commissioners to appraise land for railroads under the general railroad act is permitted by L. 1854, c. 270. *N. Y., W. S., etc., R. R. Co. v. Lang*, 33 Hun, 231.

Appeal to Court of Appeals. The discretion of the supreme court in confirming the report of commissioners is not reviewable by court of appeals. 82 N. Y., 95; 85 id., 489; 98 N. Y., 12; 67 id., 555; 77 id., 514; 81 id., 305.

§ 9. SETTING ASIDE APPRAISAL OF COMMISSIONERS.

Courts will not set aside for excess, unless that fact is plain and palpable. *Re N. Y., Lack. & W. R. R. Co.*, 27 Hun, 116, citing many cases.

An appeal from a second appraisal is forbidden by statute, but a motion may be made to set aside the report. To authorize this there must appear something more than reversible errors of law and fact; must be such irregularity, fraud or mistake as would justify setting aside a verdict in an action. *Re N. Y. El. R. R. Co.*, 41 Hun, 502, citing many cases. See 18 Hun, 378.

§ 10. COSTS IN CONDEMNATION PROCEEDINGS.

The proceedings to condemn lands for railroad companies are special proceedings, and courts have discretion to award costs, as under Code Civ. Pro., sec. 3240. *Re N. Y., Lack. & W. R. R. Co.*, 26 Hun, 592. See 31 id., 83; 94 N. Y., 287; L. 1883, c. 113, p. 100; am'd, L. 1884, c. 281, sec. 3, p. 343.

§ 11. THE POWER OF A RAILROAD COMPANY TO MORTGAGE ITS FRANCHISES.

The statute (Laws of 1850, ch. 140, sec. 28, sub. 10), authorizing a company to borrow money to complete its road, and to issue bonds therefor confers a right to mortgage all its property, rights and franchises acquired, and to be acquired, as an entirety. *Seymour v. Can. & Niagara F. R. R. Co.*, 25 Barb., 284. *Whitney v. N. Y. & Al. R. R. Co.*, 32 Hun, 164. See *Mun-*

son v. S. G., etc., R. R. Co., 103 N. Y., 58; aff'g 29 Hun, 76; Vetable v. N. Y., L. E., etc., R. R. Co., 99 N. Y.; rev'g 11 Abb. N. C., 133.

§ 12. PENALTIES AGAINST STOCKHOLDERS.

The act of 1850 (ch. 140, sec. 10), does not impose a penalty or original liability upon a stockholder, but gives a creditor a right to pursue the debt of the stockholder to the corporation. *Stephens v. Fox*, 83 N. Y., 313; aff'g 17 Hun, 435; 41 N. Y., 389; 76 id., 9.

§ 13. THE GENERAL RAILROAD ACT OF 1850, DOES NOT AUTHORIZE ELEVATED ROADS IN STREETS.

Neither said Laws of 1850, c. 140, nor amendatory or supplemental acts authorize a company organized thereunder to construct an elevated railroad in the streets of a city. *Scharper v. The B. & L. I. C. Ry. Co.*, 124 N. Y., 630. Nor does this act authorize the construction of a railroad having a two-story viaduct, the first flat having * * * an elevation of about sixty feet above the street level * * * to be made of brick arches." Said act contemplated railroad structures having some resemblance in form and manner of operation to those already built. *Re Peoples R. T. Co. v. Dash*, 125 N. Y., 93; 34 St. Rep., 595.

§ 14. INJUNCTIONS AGAINST RAILROADS.

Injunction is a proper remedy where compensation is not made to an abutting owner for lands taken for railroads. *Jewett v. Un. El. Ry. Co.*, 15 St. R., 878, following *Story* case, 90 N. Y., 122; 104 N. Y., 268.

Under Const. Art 1. sec. 18, an elevated railroad will be enjoined from constructing a track in front of premises until a right has been acquired by condemnation proceedings, under L. 1875, c. 606. *Stroub v. Man. Ry. Co.*, 39 St. Rep., 378.

An immediate injunction in view of the serious consequences to the company, should not be issued until after reasonable opportunity to settle with owners had expired. 90 N. Y., 122.

§ 15. EJECTION OF PASSENGERS FROM TRAINS.

Authority of conductor or brakeman to remove is an implied duty incident to his position, whether conferred by rules or not. The company may be liable, if the servant acted for it, although he acted without instructions, or judgment or brutality. *Hoffman v. N. Y. C., etc., R. R. Co.*, 87 N. Y., 25; see *Dwinells v. N. Y. C., etc., R. R. Co.*, 120 N. Y., 117; 30 St. Rep., 578.

§ 16. PERSONAL LIABILITY OF STOCKHOLDERS FOR DEBTS.

Personal liability of a stockholder for debts, imposed by L. 1840, c. 150, § 10, am'd by L. 1854, c. 282, ceases when the whole of the amount due on his stock has been paid to the company. *Wellington v. C. C. & I. Co.*, 52 Hun, 458.

The action under this provision must be in equity against all similar stockholders. *Id.*, 73 N. Y., 611; 3 id., 415; 10 Paige, 290.

§ 17. LIABILITY OF CORPORATION TO EMPLOYEES OF CONTRACTORS.

Employes of sub-contractors to obtain a lien upon the road must prove indebtedness of the corporation to the contractor, and of the contractor to the sub-contractor. *Samson v. Buf., N. Y., etc., R. R. Co.*, 13 Hun, 280.

§ 18. NEGLIGENCE OF ELEVATED RAILROADS.

Where the plaintiff's eye was injured by a falling cinder or clinker from defendant's engine, it was held proper to charge that the company should so construct and guard its smoke stacks and ash-pans as to reduce the possibility of accidents as much as possible. *McNaier v. Man. Ry. Co.*, 22 St. R., 840.

So where an injury to to plaintiff's eye, was caused by a fallen scale or flake of iron, due to wear of the wear of the track it was held that a company is negligent if it fails to employ the most approved machinery and construction and the best safeguards against accidents. *Manson v. Man. Ry. Co.*, 8 St. R., 118.

19. THE MEASURE OF DAMAGES FOR APPROPRIATING LANDS.

Commissioners must determine the compensation due the owner of land taken, and not the damages caused by the construction and operation of railroads over them. The test is, what is the value of the lands at present and the part not taken, after the improvements made. *Troy & Boston R. R. Co. v. Lee*, 13 Barb., 169; 16 Barb., 68, 100, 273; 78 N. Y., 423. See 29 Hun, 646; 1, 325

Witnesses should testify as to the value of the property before taken by the railroad, and afterward. *Re Norwood M. R. R. Co.*, 47 Hun, 489; 27 id., 151.

Allowance can be made only for value of land taken, not for anticipated or consequential damages. *Re U. V. & Johnsonville R. R. Co.*, 53 Barb., 457; 16 id., 68; 13 id., 169. But may be for interruption of business, inability to perform contracts, and loss of profits. *N. Y., W. S. etc., R. R. Co. v. Cosack*, 35 Hun, 650.

Commissioners should award market value of lands, and diminution in value of owners adjoining lands. *Alb. N. R. R. Co. v. Lansing*, 16 Barb., 68; *Re Utica, etc., R. R. Co.*, 56 Barb., 456; 6 Hun, 149. See 29 id., 1; 28 id., 426; 27 id., 116; 78 N. Y., 423; 11 St. R., 866.

§ 20. MEASURE OF DAMAGES OCCASIONED BY ELEVATED RAILROADS.

Recovery can only be had for damages sustained up to the time of the commencement of the action, not for permanent diminution in value on the assumption that the injury is permanent and irreparable. *Pond v. Met. El. Ry. Co.*, 112 N. Y., 186; 101 id., 98; 108 id., 660; *Talman v. Met. El. Ry. Co.*, 121 N. Y., 119.

Recovery may be for six years prior to the commencement of the action. *Hamilton v. Man. Ry. Co.*, 30 St. R., 17.

The correct rule of damages is the difference in value of the property without the elevated road and with it between the time of its erection and the commencement of the suit. Damages may be estimated with reference to the neighborhood, quality of buildings, rentals, etc. *Tallman v. Met. El. Ry. Co.*, 2 N. Y. S., 130; *Newman v. Me. E. R. Co.*, 118 N. Y., 626.

In estimating damages by elevated railroads, it is proper to consider the injury to trades and business, and that caused by smoke, gases, ashes, and cinders and drippings of oil and water from passing trains. *Drucker v. Man. Ry. Co.*, 106 N. Y., 157.

Recovery may be had for injury to easement, although no rental value be shown; compensation being allowed for vacant lots having no rental value.

Drucker v. Met. El. Ry. Co., 106 N. Y., 164; 52 Super. (J. & S.), 410; 55 id., 555.

The invasion of a dwelling by smoke, noise of engines, and obstruction of light, air and access, constitute special damages, if the structure or use of engine is unlawful. Patten v. N. Y. El. R. R. Co., 3 Abb. N. C., 306.

Owners of lots abutting on city street, of which the fee is the municipality, have by reason of proximity special and peculiar rights, facilities and privileges therein in the nature of easements, not enjoyed in common by citizens at large, constituting property rights of which they cannot be deprived without compensation. And a use of such street is inconsistent with its use as a public street, or interference with those easements is appropriation thereof for which compensation to the extent of damages occasioned can be recovered. The noise of trains is an element of damages; and any consequential damages to property occasioned by the company by an unauthorized occupation of the street, may be considered. Kane v. N. Y. E. R. R. Co., 125 N. Y., 164. See also Stevens v. N. Y. El. Ry. Co., 29 St. R., 361.

§ 21. MISCELLANEOUS.

A purchaser of land adjoining a railroad takes it *cum onere*, and is not entitled to damages for the taking. The relaying of a track is not a taking so as to entitle one to damages. Hentz v. Long Is. R. R. Co., 13 Barb., 646; 10 id., 360.

Authority to excavate or use streets below the surface, except temporarily for purposes of construction or repair, was not acquired by the Third Ave. Ry. Co. by its charter, or by L. 1854. c. 140; L. 1860, c. 10. Nor did it obtain authority to construct or operate underground conduits for a cable road. Peo. ex rel. v. Newton, 112 N. Y., 396; aff'g 58 Hun, 477; 98 N. Y., 6; 14 id., 525.

Acceptance of franchises by railroad company constitutes a contract on its part to restore the streets to proper condition.

The legislature may release a corporation having a special charter from conditions which the state alone could enforce against it, or may impose additional burdens upon it. Gilbert El. Ry. Co. v. Anderson, 3 Abb. N. C., 484.

An action will not lie against a railroad company for trespass for removing structures, as part of realty, when the land was lawfully entered upon. McNair v. R., N. Y. & P. R. Co., 14 N. Y. S., 39.

CHAPTER IV.

PROCEEDINGS FOR THE CONDEMNATION OF REAL PROPERTY.
LAWS OF 1890, CHAPTER 95, AMENDING THE CODE OF CIVIL
PROCEDURE, CHAPTER 23.

SUPPLEMENTARY PROVISIONS.

TITLE I.

SECTION 3357. Condemnation law.

3358. Terms used, defined.

3359. Title to real estate, how acquired.

3360. Petition to supreme court: petition what to contain.

3361. Notice of presentation of petition; service of petition and notice.

3362. Service, how made.

3363. Duty of general guardian, committee or trustee; court when to appoint guardian *ad litem*; when attorney for defendant.

3364. Appearance of parties; service of papers.

3365. Answer to petition.

3366. Verification of petition and answer.

3367. Trial of issues and decision thereon.

3368. Provisions applicable.

3369. Judgment, entry of; in favor of plaintiff; commissioners of appraisal, appointment of.

3370. Duty of commissioners; report; compensation.

3371. Confirmation of report; rehearing before commissioners; final order; deposit of money deemed payment.

3372. Offer to purchase by plaintiff; notice of acceptance of offer; costs and allowances.

3373. Compensation awarded, etc.; to be docketed as judgment; delivery of possession; issue of writ of assistance.

3374. Abandonment of proceedings by plaintiff.

3375. Appeal from final order; stay of proceedings.

3376. Appeal from judgment in favor of defendant.

3377. New appraisal.

3378. Adverse and conflicting claims to money.

3379. Power of court to prevent disturbance of possession.

3380. Entry upon the use of property after answer has been interposed

3381. Notice of pendency of proceedings; effect thereof; duty of county clerk.

3382. Power of court to make all necessary orders, etc.

3383. Repeal.

3384. Title, when to take effect.

TITLE II.

PROCEEDINGS FOR THE SALE OF CORPORATE REAL PROPERTY.

SECTION 3390. Proceedings on application to sell, mortgage, etc., property.

3391. Petition to court; petition, what to contain; verification.

3392. Hearing of application.

3393. Court may grant application; appearance on hearing.

3394. Notice to creditors on application of insolvent corporation, etc.

3395. Service of notices.

3396. Power of court to make all necessary orders.

3397. Title, when to take effect.

§ **3357. Condemnation law.**—This title shall be known as the condemnation law.

§ **3358. Terms used defined.**—The term “person,” when used herein, includes a corporation, joint stock association, the state and a political division thereof, as well as a natural person; the term “real property,” any right, interest or easement therein or appurtenance thereto; and the term “owner,” all persons having any estate, interest, or easement in the property to be taken, or any lien, charge, or incumbrance thereon. The person instituting the proceedings shall be termed the plaintiff; and the person against whom the proceeding is brought, the defendant.

§ **3359. Title to real estate, how acquired.**—Whenever any person is authorized to acquire title to real property, for a public use by condemnation the proceeding for that purpose shall be taken in the manner prescribed by this title.¹

§ **3360. Petition to supreme court; petition, what to contain.**—The proceeding shall be instituted by the presentation of a petition by the plaintiff to the supreme court setting forth the following facts:

1. His name, place of residence, and the business in which engaged; if a corporation or joint stock association, whether foreign or domestic, its principal place of business within the state, the names and places of residence of its principal officers, and of its directors, trustees or board of managers, as the case may be, and

¹ 7 N. Y., 314; 19 Barb., 118; 5 Paige, 137; 9 N. Y., 100; 21 id., 595; 112 id., 61; 42 Hun, 202; 103 N. Y., 251; 45 id., 234; 46 id., 546; 66 id., 413; 53 id., 574; 91 id., 552; 63 id., 326; 99 id., 13; 77 id., 248; 6 N. Y. S., 105; 35 Hun, 220; 32 St. R., 1; 10 N. Y. S., 379; 1 Hun, 496; 3 Paige, 45; 3 N. Y., 511; 56 Hun, 293; 117 N. Y., 150; 120 id., 309; 32 St. R., 969; 10 N. Y., 328; 68 N. Y., 167; 8 N. Y. S., 151, 290; 104 N. Y., 143; 39 Hun 424.

the object or purpose of its incorporation or associations*; if a political division of the state, the names and places of residence of its principal officers; and if the state, the name and place of residence of the officer acting in its behalf in the proceeding.

2. A specific description of the property to be condemned and its location, by metes and bounds, with reasonable certainty.

3. The public use for which the property is required and a concise statement of the facts showing the necessity of its acquisition for such use.

4. The names and places of residence of the owners of the property; if an infant, the name and place of residence of his general guardian, if he has one, if not, the name and place of residence of the person with whom he resides; if a lunatic, idiot, or habitual drunkard, the name and place of residence of his committee or trustee, if he has one; if not, the name and place of residence of the person with whom he resides. If a non-resident, having an agent or attorney residing in the state authorized to contract for the sale of the property, the name and place of residence of such agent or attorney; if the name or place of residence of any owner can not after diligent inquiry be ascertained, it may be so stated with a specific statement of the extent of the inquiry which has been made.

5. That the plaintiff has been unable to agree with the owner of the property for its purchase and the reason of such inability.

6. The value of the property to be condemned.

7. A statement that it is the intention of the plaintiff, in good faith, to complete the work or improvement, for which the property is to be condemned; and that all the preliminary steps required by law have been taken to entitle him to institute the proceeding.

8. A demand for relief, that it may be adjudged that the public use requires the condemnation of the real property described, and that the plaintiff is entitled to take and hold such property for the public use specified, upon making compensation therefor, and that commissioners of appraisal be appointed to ascertain the compensation to be made to the owners for the property so taken.¹

*So in the original.

¹ 8 N. Y. S., 151; 27 Hun, 57; 14 W. Dig., 520; 64 How. Pr., 216; 67 N. Y., 371; 103 id., 251; 72 id., 245; 1 St. R., 512; 104 N. Y., 1; 89 id., 454; 19 Abb. N. C., 421; 16 id., 153; 38 Hun, 553; 71 N. Y., 315; 10 Hun, 49; 6 How. Pr., 238; 70 id., 191; 15 W. Dig., 201.

§ **3361. Notice of presentation of petition; service of petition and notice.**—There must be annexed to the petition a notice of the time and place at which it will be presented to a special term of the supreme court, held in the judicial district where the property or some portion of it is situated, and a copy of the petition and notice must be served upon all the owners of the property at least eight days prior to its presentation.¹

§ **3362. Service, how made.**—Service of the petition and notice must be made in the same manner as the service of a summons in an action in the supreme court is required to be made, and all the provisions of articles one and two of title one of chapter five of this act, which relate to the service of a summons, either personally or in any other way, and the mode of proving service, shall apply to the service of the petition and notice. If the defendant has an agent or attorney residing in this state, authorized to contract for the sale of the real property described in the petition, service upon such agent or attorney will be sufficient service upon such defendant. In case the defendant is an infant of the age of fourteen years or upwards, a copy of the petition and notice shall also be served upon his general guardian, if he has one, if not, upon the person with whom he resides.

§ **3363. Duty of general guardian, committee or trustee; court when to appoint guardian ad litem; when attorney for defendant.**—If a defendant is an infant, idiot, lunatic or habitual drunkard, it shall be the duty of his general guardian, committee or trustee, if he has one, to appear for him upon the presentation of the petition and attend to his interests, and in case he has none, or in case his general guardian, committee or trustee fails to appear for him, the court shall, upon the presentation of the petition and notice, with proof of service, without further notice, appoint a guardian ad litem for such defendant, whose duty it shall be to appear for him and attend to his interests in the proceeding, and, if deemed necessary to protect his rights, the court may require a general guardian, committee or trustee, or a guardian ad litem to give security in such sum and with such sureties as the court may approve. If a service other than personal has been made upon any defendant, and he does not appear upon the presentation of the petition, the court shall appoint some compe-

¹ 8 N. Y. S., 313; 56 Hun, 293; 6 N. Y., 522, 552; 2 Abb. N. S., 415; 9 Barb., 449. 29 Hun, 269; 32 St. R., 716.

tent attorney to appear for him and attend to his interests in the proceeding.

§ **3364. Appearance of parties; service of papers.**—The provisions of law and of the rules and practice of the court, relating to the appearance of parties in person or by attorney in actions in the supreme court, shall apply to the proceeding from and after the service of the petition, and all subsequent orders, notices and papers may be served upon the attorney appearing and upon a guardian ad litem in the same manner and with the same effect as the service of papers in an action in the supreme court may be made.¹

§ **3365. Answer to petition.**—Upon presentation of the petition and notice with proof of service thereof, an owner of the property may appear and interpose an answer, which must contain a general or specific denial of each material allegation of the petition controverted by him, or of any knowledge or information thereof sufficient to form a belief, or a statement of new matter constituting a defense to the proceeding.²

§ **3366. Verification of petition and answer.**—A petition or answer must be verified, and the provisions of this act relating to the form and contents of the verification of pleadings in courts of record, and the persons by whom it may be made, shall apply to the verification.

§ **3367. Trial of issue and decision thereon.**—The court shall try any issue raised by the petition and answer at such time and place as it may direct, or it may order the same to be referred to a referee to hear and determine, and upon such trial the court or referee shall file a decision in writing, or deliver the same to the attorney for the prevailing party, within twenty days after the final submission of the proofs and allegations of the parties, and the provisions of this act relating to the form and contents of decisions upon the trial of issues of act by the court or a referee, and to making and filing exceptions thereto, and the making and settlement of a case for the review thereof upon appeal, and to the proceedings which may be had, in case such decision is not filed or

¹ 19 Abb. N. C., 421; 33 Hun, 148.

² 35 Hun, 220; 99 N. Y., 12; 72 id., 245; 46 id., 546; 103 id., 251; 20 W. Dig., 15.

delivered within the time herein required, and to the powers of the court and referee upon such trial, shall be applicable to a trial and decision under this title.¹

§ **3368. Provisions applicable.**—The provisions of title one of chapter eight of this act shall also apply to proceedings had under this title.

§ **3369.—Judgment, entry of; in favor of plaintiff; commissioners of appraisal, appointment of.**—Judgment shall be entered pursuant to the direction of the court or referee in the decision filed. If in favor of the defendant, the petition shall be dismissed with costs, to be taxed by the clerk at the same rates as are allowed of course to a defendant prevailing in an action in the supreme court, including the allowances for proceedings before and after notice of trial. If the decision is in favor of the plaintiff, or if no answer has been interposed and it appears from the petition that he is entitled to the relief demanded, judgment shall be entered, adjudging that the condemnation of the real property described is necessary for the public use, and that the plaintiff is entitled to take and hold the property for the public use specified, upon making compensation therefor, and the court shall thereupon, appoint three disinterested and competent freeholders, residents of the county where the real property or some part of it is situated, or of some adjoining county, commissioners to ascertain the compensation to be made to the owners for the property to be taken for the public use specified, and fix the time and place for the first meeting of the commissioners. If a trial has been had, at least eight days' notice of such appointment must be given to all defendants who have appeared.

§ **3370. Duty of commissioners; report; compensation.**—The commissioners shall take and subscribe the constitutional oath of office. Any of them may issue subpoenas and administer oaths to witnesses; a majority of them may adjourn the proceedings before them, from time to time, in their discretion. Whenever they meet, except by appointment of the court or pursuant to adjournment, they shall cause at least eight days' notice of such meeting to be given to the defendants who have appeared, or their agents or attorneys. They shall view the premises described in

¹ 37 Hun, 442; 102 N. Y., 343; 17 W. Dig., 469; 65 How. Pr., 216; 63 N. Y., 326; 43 id., 137; 35 Hun, 220; 99 N. Y., 12; 53 id., 574; 103 id., 251.

the petition, and hear the proofs and allegations of the parties, and reduce the testimony taken by them, if any, to writing, and after the testimony in each case is closed, they, or a majority of them, all being present, shall, without necessary delay ascertain and determine the compensation which ought justly to be made by the plaintiff to the owners of the property appraised by them; and, in fixing the amount of such compensation, they shall not make any allowance or deduction on account of any real or supposed benefits which the owners may derive from the public use, for which the property is to be taken, or the construction of any proposed improvement connected with such public use. But in case the plaintiff is a railroad corporation and such real property shall belong to any other railroad corporation, the commissioners on fixing the amount of such compensation, shall fix the same at its fair value for railroad purposes. They shall make a report of their proceedings to the supreme court with the minutes of the testimony taken by them, if any; and they shall each be entitled to six dollars for services, for every day they are actually engaged in the performance of their duties, and their necessary expenses, to be paid by the plaintiff.¹

§ 3371.—Confirmation of report; rehearing before commissioners; final order; deposit of money deemed payment.

—Upon filing the report of the commissioners, any party may move for its confirmation at a special term, held in the district where the property or some part of it is situated, upon notice to the other parties who have appeared, and upon such motion, the court may confirm the report, or may set it aside for irregularity, or for error of law in the proceedings before the commissioners, or upon the ground that the award is excessive or insufficient. If the report is set aside, the court may direct a rehearing before the same commissioners, or may appoint new commissioners for that purpose, and the proceedings upon such rehearing shall be conducted in the manner prescribed for the original hearing, and the

¹ 19 Wend., 659; 15 St. R., 583; 5 Lans., 298; 27 Hun, 151, 537; 6 id., 149; 78 N. Y., 423; 53 Hun, 280; 6 N. Y. S., 750; 16 Barb., 100, 273; 35 Hun, 260, 633; 16 Barb., 68; 33 Hun, 148; 98 N. Y., 139; 7 How., 194; 35 Hun, 575; 36 id., 630; 28 id., 426; 1 Sheldon, 408; 17 Hun, 344; 8 N. Y. S., 78, 813; 9 id., 158; 29 Hun, 609, 646; 5 Den., 206; 7 N. Y., 152; 7 N. Y. S., 853; 1 T. & C., 549; 5 id., 217; 118 N. Y., 618; 22 Hun, 176; 66 How. Pr., 358; 99 N. Y., 296; 42 Hun, 202; 120 N. Y., 309; 8 Wend., 85; 38 How. Pr., 308; 11 N. Y., 308

same proceedings shall be had for the confirmation of the second report as are herein prescribed for the confirmation of the first report. If the report is confirmed, the court shall enter a final order in the proceeding, directing that compensation shall be made to the owners of the property, pursuant to the determination of the commissioners, and that upon payment of such compensation the plaintiff shall be entitled to enter into the possession of the property condemned, and take and hold it for the public use specified in the judgment. Deposit of the money to the credit of, or payable to the order of the owner, pursuant to the direction of the court, shall be deemed a payment within the provisions of this title.¹

§ 3372. Offer to purchase by plaintiff; notice of acceptance of offer; costs and allowances.—In all cases where the owner is a resident and not under legal disability to convey title to real property the plaintiff before service of his petition and notice, may make a written offer to purchase the property at a specified price, which must within ten days thereafter be filed in the office of the clerk of the county where the property is situated; and which can not be given in evidence before the commissioners, or considered by them. The owner may at the time of the presentation of the petition, or at any time previously, serve notice in writing of the acceptance of plaintiff's order, and thereupon the plaintiff may, upon filing the petition, with proof of the making of the offer and its acceptance, enter an order that upon payment of the compensation agreed upon, he may enter into possession of the real property described in the petition, and take and hold it for the public use therein specified. If the offer is not accepted, and the compensation awarded by the commissioners does not exceed the amount of the offer with interest from the time it was made, no costs shall be allowed to either party. If the compensation awarded shall exceed the amount of the offer with interest from the time it was made, or if no offer was made, the court shall, in the final order, direct that the defendant recover of the plaintiff the costs of the proceeding, to be taxed by the

¹ 16 Hun, 497; 7 N. Y. S., 943; 8 id., 763; 10 How. Pr., 168; 5 id., 177; 60 N. Y., 649; 33 Hun, 293; 29 id., 1; 102 N. Y., 704; 5 Lans., 298; 38 How. Pr., 187; 37 Hun, 317; 64 N. Y., 60; 5 Hun, 105; 41 id., 392; 63 How. Pr., 265; 99 N. Y., 570; 34 Hun, 441; 13 Barb., 169; 37 Hun, 317; 48 Barb., 9; 16 id., 100; 10 How., 168; 6 N. Y. S., 750; 7 id., 279; 29 Hun, 602; 93 N. Y., 385; 38 How., 187.

clerk at the same rate as is allowed, of course, to the defendant when he is the prevailing party in an action in the supreme court, including the allowances for proceedings before and after notice of trial and the court may also grant an additional allowance of costs, not exceeding five per centum upon the amount awarded. The court shall also direct in the final order what sum shall be paid to the general or special guardian, or committee or trustee of an infant, idiot, lunatic or habitual drunkard, or to an attorney appointed by the court to attend to the interests of any defendant upon whom other than personal service of the petition and notice may have been made, and who has not appeared, for costs, expenses and counsel fees, and by whom or out of what fund the same shall be paid. If a trial has been had, and all the issues determined in favor of the plaintiff, costs of the trial shall not be allowed to the defendant, but the plaintiff shall recover of any defendant answering the costs of such trial caused by the interposition of the unsuccessful defense, to be taxed by the clerk at the same rate as is allowed to the prevailing party for the trial of an action in the supreme court.¹ •

§ 3373. Compensation awarded, etc., to be docketed as a judgment; delivery of possession; issue of writ of assistance.—Upon the entry of the final order, the same shall be attached to the judgment roll in the proceedings, and the amount directed to be paid, either as compensation to the owners, or for the costs or expenses of the proceedings, shall be docketed as a judgment against the person who is directed to pay the same, and it shall have all the force and effect of a money judgment in an action in the supreme court, and collection thereof may be enforced by execution and by the same proceedings as judgments for the recovery of money in the supreme court may be enforced under the provisions of this act. When payment of the compensation awarded, and costs of the proceeding, if any, has been made, as directed in the final order, and a certified copy of such order has been served upon the owner, he shall, upon demand of the plaintiff, deliver possession thereof to him, and in case possession is not delivered when demanded, the plaintiff may apply to the court without notice, unless the court shall require notice to be given, upon proof of such payment and of service of the copy order, and of the demand and non-compliance therewith, for

¹ 32 St. R., 836; 8 Hun, 30; 67 N. Y., 371.

a writ of assistance, and the court shall thereupon cause such writ to be issued, which shall be executed in the same manner as when issued in other cases for the delivery of possession of real property.

§ 3374. Abandonment of proceedings by plaintiff.—Within thirty days after the entry of the final order the plaintiff may abandon the proceeding, by filing and serving a written notice of his determination to do so, and paying the fees and expenses of the commissioners, and the costs and expenses directed to be paid in such order; and thereupon payment of the amount awarded for compensation shall not be enforced, but in such case the plaintiff shall not renew proceedings to acquire title to such lands or any part thereof without a tender, or deposit in court of the amount of the award and interest thereon.

§ 3375. Appeal from final order; stay of proceedings.—Appeal may be taken to the general term of the supreme court from the final order, within the time provided for appeals from orders by title four of chapter twelve of this act; and all the provisions of such chapter relating to appeals to the general term from orders of the special term shall apply to such appeals. Such appeal will bring up for review all the proceedings subsequent to the judgment, but the judgment and proceedings antecedent thereto may be reviewed on such appeal, if the appellant states in his notice that the same will be brought up for review, and exceptions shall have been filed to the decision of the court or the referee, and a case or a case and exceptions shall have been made, settled and allowed, as required by the provisions of this act, for the review of the trial of actions in the supreme court without a jury. The proceedings of the plaintiff shall not be stayed upon such an appeal, except by order of the court, upon notice to him, and the appeal shall not effect his possession of the property taken, and the appeal of a defendant shall not be heard except on his stipulation not to disturb such possession.¹

§ 3376. Appeal from judgment in favor of defendant.—If a trial has been had and judgment entered in favor of the defendant, the plaintiff may appeal therefrom to the general term

¹ 112 N. Y., 61; 47 Hun, 396; 98 N. Y., 12, 447; 94 id., 287; 8 N. Y. S., 763; 7 id., 943; 43 N. Y., 137; 4 N. Y. S., 485; 82 N. Y., 95; 64 id., 60; 85 id., 489; 11 id., 276.

within the time provided for appeals from judgments by title four of chapter twelve of this act, and all the provisions of such chapter relating to appeals from judgments shall apply to such appeals; and on the hearing of the appeal the general term may affirm, reverse or modify the judgment, and in case of reversal may grant a new trial, or direct that judgment be entered in favor of the plaintiff. If the judgment is affirmed, costs shall be allowed to the respondent, but if reversed or modified, no costs of the appeal shall be allowed to either party.

§ 3377. New appraisal.—On the hearing of the appeal from the final order the court may direct a new appraisal before the same or new commissioners, in its discretion, and the report of such commissioners shall be final and conclusive upon all parties interested. If the amount of the compensation to be paid is increased by the last report, the difference shall be a lien upon the land appraised, and shall be paid to the parties entitled to the same, or shall be deposited as the court shall direct; and if the amount is diminished, the difference shall be refunded to the plaintiff by the party to whom the same may have been paid, and judgment therefor may be rendered by the court, on the filing of the last report, against the parties liable to pay the same.¹

§ 3378. Adverse and conflicting claimants to money.—If there are adverse and conflicting claimants to the money, or any part of it, to be paid as compensation for the property taken, the court may direct the money to be paid into the court by the plaintiff, and may determine who is entitled to the same, and direct to whom the same shall be paid, and may, in its discretion, order a reference to ascertain the facts on which such determination and direction are to be made.²

§ 3379. Power of court to prevent disturbance of possession.—At any stage of the proceeding the court may authorize the plaintiff, if in possession of the property sought to be condemned, to continue in possession, and may stay all actions or proceedings against him on account thereof, upon giving security, or depositing such sum of money as the court may direct to be held as security for the payment of the compensation which may

¹ 55 N. Y., 600; 7 N. Y. S., 279; 41 Hun, 502; 85 N. Y., 489; 3 N. Y. St. R., 320.

² 90 N. Y., 342; 6 N. Y. S., 750; 5 T. & C., 84; 53 Hun, 131; 60 N. Y., 116; 2 Hun, 482.

be finally awarded to the owner therefor and the costs of the proceeding, and in every such case the owner may conduct the proceeding to a conclusion, if the plaintiff delays or neglects to prosecute the same.

§ 3380. Entry upon the use of property after answer has been interposed.—When an answer to the petition has been interposed, and it appears to the satisfaction of the court that the public interests will be prejudiced by delay, it may direct that the plaintiff be permitted to enter immediately upon the real property to be taken, and devote it temporarily to the public use specified in the petition, upon depositing with the court the sum stated in the answer as the value of the property, and which sum shall be applied, so far as it may be necessary for that purpose, to the payment of the award that may be made, and the costs and expenses of the proceeding, and the residue, if any, returned to the plaintiff, and, in case the petition should be dismissed, or no award should be made, or the proceedings should be abandoned by the plaintiff, the court shall direct that the money so deposited, so far as it may be necessary, shall be applied to the payment of any damages which the defendant may have sustained by such entry upon and use of his property, and his costs and expenses of the proceeding, such damages to be ascertained by the court, or a referee to be appointed for that purpose, and if the sum so deposited shall be insufficient to pay such damages, and all costs and expenses awarded to the defendant, judgment shall be entered against the plaintiff for the deficiency, to be enforced and collected in the same manner as a judgment in the supreme court; and the possession of the property shall be restored to the defendant.

§ 3381. Notice of pendency of proceedings; effect thereof; duty of county clerk.—Upon service of the petition, or at any time afterwards before the entry of the final order, the plaintiff may file in the clerk's office of each county where any part of the property is situated, a notice of the pendency of the proceeding stating the names of the parties and the object of the proceeding, and containing a brief description of the property affected thereby, and from the time of filing, such notice shall be constructive notice to a purchaser, or incumbrancer of the property affected thereby, from or against a defendant with respect to whom the notice is directed to be indexed, as herein prescribed, and a person whose conveyance or incumbrance is subsequently

executed or subsequently recorded, is bound by all proceedings taken in the proceeding, after the filing of the notice, to the same extent as if he was a party thereto. The county clerk must immediately record such notice when filed in the book in his office kept for the purpose of recording notices of pendency of actions, and index it to the name of each defendant specified in the direction appended at the foot of the notice, and subscribed by the plaintiff or his attorney.

§ 3382. Power of court to make all necessary orders, etc.—In all proceedings under this title, where the mode or manner of conducting all or any of the proceedings therein is not expressly provided for by law, the court before whom such proceedings may be pending, shall have the power to make all necessary orders and give necessary directions to carry into effect the object and intent of this title, and of the several acts conferring authority to condemn lands for public use, and the practice in such cases shall conform, as near as may be, to the ordinary practice in such court.

§ 3383. Repeal.—So much of all acts and parts of acts as prescribe a method of procedure in proceedings for the condemnation of real property for a public use is repealed, except such acts and parts of acts as prescribe a method of procedure for the condemnation of real property for public use as a highway, or as a street, avenue, or public place in an incorporate city or village, or as may prescribe methods of procedure for such condemnation for any public use for, by, on behalf, on the part, or in the name of the corporation of the city of New York, known as the mayor aldermen, and commonalty of the city of New York, or by whatever name known, or by or on the application of any board, department, commissioners or other officers acting for or on behalf or in the name of such corporation or city, or where the title to the real property so to be acquired vests in such corporation or in such city, and all proceedings for the condemnation of real property embraced within the exceptions enumerated in this section are exempted from the operation of this title. (Thus amended by chap. 247, Laws of 1890.)

§ 3384. Title, when to take effect.—This title shall take effect on the first day of May, one thousand eight hundred and ninety, and shall not affect any proceeding previously commenced.

TITLE II.

PROCEEDINGS FOR THE SALE OF CORPORATE REAL PROPERTY.

§ **3390. Proceedings on application to sell, mortgage, etc., property.**—Whenever any corporation or joint stock association is required by law to make application to the court for leave to mortgage, lease or sell its real estate, the proceeding therefor shall be had pursuant to the provisions of this title.¹

§ **3391. Petition to court; petition, what to contain; verification.**—The proceedings shall be instituted by the presentation to the supreme court of the district or the county court of the county where the real property, or some part of it, is situated, by the corporation or association, applicant, of a petition setting forth the following facts:

1. The name of the corporation or association, and of its directors, trustees or managers, and of its principal officers, and their places of residence.

2. The business of the corporation or association, or the object or purpose of its incorporation or formation, and a reference to the statute under which it was incorporated or formed.

3. A description of the real property to be sold, mortgaged or leased, by metes and bounds, with reasonable certainty.

4. That the interests of the corporation or association will be promoted by the sale, mortgage or lease, of the real property specified, and a concise statement of the reasons therefor.

5. That such sale, mortgage or lease has been authorized, by a vote of at least two-thirds of the directors, trustees or managers of the corporation or association, at a meeting thereof, duly called and held, and a copy of the resolution granting such authority.

6. The market value of the remaining real property of the corporation or association, and the cash value of its personal assets, and the total amount of its debts and liabilities, and how secured, if at all.

7. The application proposed to be made of the moneys realized from such sale, mortgage or lease.

8. Where the consent of the shareholders, stockholders or members of the corporation or association, is required by law to be first obtained, a statement that such consent has been given, and a copy of the consent or a certified transcript of the record of the meeting at which it was given, shall be annexed to the petition.

¹ 25 Abb. N. C., 355.

9. A demand for leave to mortgage, lease or sell the real estate described.

The petition shall be verified in the same manner as a verified pleading in an action in a court of record.¹

§ 3392. Hearing of application.—Upon presentation of the petition, the court may immediately proceed to hear the application, or it may, in its discretion, direct that notice of the application shall be given to any person interested therein, as a member, stockholder, officer or creditor of the corporation or association, or otherwise, in which case the application shall be heard at the time and place specified in such notice, and the court may in any case appoint a referee to take the proofs and report the same to the court, with his opinion thereon.

§ 3393. Court may grant application; appearance on hearing.—Upon the hearing of the application, if it shall appear, to the satisfaction of the court, that the interests of the corporation or association will be promoted thereby, an order may be granted authorizing it to sell, mortgage or lease the real property described in the petition, or any part thereof, for such sum, and upon such terms as the court may prescribe, and directing what disposition shall be made of the proceeds of such sale, mortgage or lease.

Any person, whose interests may be affected by the proceeding, may appear upon the hearing and show cause why the application should not be granted.²

§ 3394. Notice to creditors on application of insolvent corporation.—If the corporation or association is insolvent, or its property and assets are insufficient to fully liquidate its debts and liabilities, the application shall not be granted, unless all the creditors of the corporation have been served with a notice of the time and place at which the application will be heard.

§ 3395. Service of notices.—Service of notices, provided for in this title, may be made either personally or, in case of absence, by leaving the same at the place of residence of the person to be served, with some person of mature age and discretion, at least eight days before the hearing of the application, or by mail—

¹ 46 N. Y., 131; 73 id., 82.

² 73 N. Y., 82; 18 id., 395; 21 W. Dig., 80; 46 N. Y., 131; 3 Edw., 155; 4 Abb. N. C., 51; 23 Barb., 327.

ing the same, duly enveloped and addressed and postage paid, at least sixteen days before such hearing.

§ 3396. Power of court to make all necessary orders.—In all applications made under this title, where the mode or manner of conducting any or all of the proceedings thereon are not expressly provided for, the court before whom such application may be pending, shall have the power to make all the necessary orders and give the proper directions to carry into effect the object and intent of this title, or of any act authorizing the sale of corporate real property, and the practice in such cases shall conform, as near as may be, to the ordinary practice in such court.

§ 3397. Title, when to take effect.—This title shall take effect May first, one thousand eight hundred and ninety, and shall not affect any proceeding previously commenced.

CHAPTER V.

PROVISIONS IN REGARD TO THE ORGANIZATION AND MANAGEMENT OF RAILROADS.

- SECTION 1. The charter of railroads may be altered, suspended or repealed.
2. Notice by publication of application to alter, amend or extend charter.
 3. When company may assume another corporate name.
 4. When majority of directors is sufficient to constitute a quorum.
 5. Directors may change in certain cases the time for holding elections.
 6. Directors of corporation to appoint president, secretary and other officers.
 7. Act of incorporation must be pleaded.
 8. When corporate existence must be proved.

§ 1. The charter of railroads may be altered, suspended or repealed.—The state constitution, article 8, § 1, which grants authority to the legislature to pass laws for the formation of corporations, declares that all general laws and special acts passed pursuant to that section may be altered from time to time or repealed, and the Revised Statutes (1 R. S., 600, § 8, 6th ed.; R. S., vol. 2, p. 391), further provide that “the charter of every corporation that shall hereafter be granted by the legislature shall be subject to alteration, suspension and repeal, in the discretion of the legislature.” (See *White v. Syracuse and Utica R. R. Co.*, 14 Barb., 559, as to the exercise of the power by the legislature.)¹

§ 2. Notice by publication of application to alter, amend or extend charter, 1 Revised Statutes, 156.—Every association intending to apply to the legislature for an act of incorporation, and every corporation intending to apply for an alteration, amendment or extension of its charter, shall cause the like notice (*i. e.* by advertisement, to be published for at least six weeks successively immediately before such application or before the first day of the session at which the same is to be made), of such application to be published in the state paper, and also in a news-

¹ 27 Hun, 483, 489; 40 *id.*, 31; 111 N. Y., 44, 142; 45 Hun, 524; 17 Barb., 608; 8 *id.*, 364; 22 Abb. N. C., 218; 5 Hill., 383; 14 Barb., 559; 10 Barb., 260, 281.

paper published in the county in which such corporation is intended to be or should have been established.

§ 2. If no newspaper be printed in a county in which any notice is required to be published, such notice shall be published in like manner in the place nearest thereto in which a newspaper shall be published.

§ 3. If the application be for an act of incorporation, the notice shall specify the amount of the capital stock required to carry the objects of such incorporation into effect, and if the application be for the alteration in any charter already granted, the notice shall state specifically the alteration intended to be applied for.

§ 3. **When company may assume another name.**—Laws of 1870, ch. 322, sec. 1; am'd L. 1874, ch. 76; am'd L. 1876, ch. 280; am'd L. 1891, ch. 38. Any incorporation, incorporated company, society or association organized under the laws of this state, excepting banks, banking associations, trust companies, life, health, accident, marine and fire insurance companies, may apply at any special term of the supreme court sitting in the county in which shall be situated its chief business office, for an order to authorize it to assume another name.¹

§ 4. **When majority of directors is sufficient to constitute a quorum.** 1 Revised Statutes 600, section 6.—When the corporate powers of any corporation are directed by its charter to be exercised by any particular body, or number of persons, a majority of such body, or persons, if it be not otherwise provided in the charter, shall be a sufficient number to form a board for the transaction of business; and every decision of a majority of the persons duly assembled as such board, shall be valid as a corporate act.²

§ 5. **Directors may change in certain cases the time for holding elections.** Laws of 1881, chapter 317, section 1.—Any railroad company, the time for the annual election of directors in

¹ A corporation has not an absolute right, under this provision, to change its name, although, "there is no reasonable objection." The court has power to determine whether or not there is any reasonable objection, and its discretion where no abuse is shown, is not reviewable by the court of appeals. *Matter of U. S. Mercantile R. & C. A.*, 115 N. Y., 176.

NOTE: See L. 1870, ch. 322, sections 2-6, for proceedings on application to change corporate name. Sec. 2 am'd by L. 1891, ch. 38.

² 39 Hun, 502; 48 id., 576; 30 id., 209; 19 N. Y., 207; 5 Den., 567; 7 Con., 402.

which is now fixed for any day in the month of June, may by a vote of a majority of the stock, either in person or by proxy, thereof to that effect, and filing in the office of the secretary of state a copy of such proceedings, certified by the secretary of the company under its corporate seal, change the time of holding such annual election to any day in the month of April; provided, however, that the first election held under such resolution shall be held in the month of April which shall precede the time at which such election would otherwise have been held.

§ 6. Directors of corporation to appoint president, secretary and other officers. Laws of 1850, chapter 140, section 6.—The directors shall appoint one of their number president; they may also appoint a treasurer and secretary, and such other officers and agents as shall be prescribed by the by-laws.¹

§ 7. Act of incorporation; must be pleaded.—Code of Civ. Pro., § 1775. In an action brought by or against a corporation the complainant must aver that the plaintiff or the defendant, as the case may be, is a corporation, must state whether it is a domestic corporation or a foreign corporation, and, if the latter, the state, county or government by or under whose laws it was created. But the plaintiff need not set forth or specifically refer to any act or proceeding by or under which the corporation was created.²

§ 8. When corporate existence must be proved.—Code of Civil Procedure, § 1776. In an action brought by or against a corporation the plaintiff need not prove upon the trial the existence of the corporation, unless the answer is verified and contains an affirmative allegation that the plaintiff or the defendant, as the case may be, is not a corporation.³

¹ 33 Hun, 152; 89 N. Y., 75, 88.

² 32 Hun, 272; § 4, 96 N. Y., 13; 5 Civ. Pro. R., 116; 3 Law Bull., 29; 19 Civ. Pro., 53; 30 N. Y. St. Rep., 643; 14 id., 427; 3 Civ. Pro. R., 182; 9 Abb. N. C., 162; 14 N. Y. St. Rep., 427; 2 Robt., 509; 10 Civ. Pro. R., 176; 31 Barb., 407; 15 How., 204; 10 Abb. N. C., 85; 52 Hun, 307; 23 N. Y. St. Rep., 462; 24 id., 738; 19 Weekly Dig., 48; 15 Civ. Pro. R., 250; 17 N. Y. State Rep., 381; 13 Daly, 509; 11 Civ. Pro. R., 61; 1 N. Y. St. Rep., 617; 3 How. U. S., 128; 10 N. Y. Supp., 36; 1 Daly, 263; 44 Barb., 180; 16 Abb., 58; 33 N. Y., 291; 18 Abb., 369; 28 How., 211. See L. 1882, ch. 410, secs. 1104, 1105; 15 Civ. Pro. R., 250; 17 N. Y. St. Rep., 331, 389; 8 Civ. Pro., 401.

³ 31 Hun, 96; 4 Civ. Pro. R., 260; aff'g 3 id., 263; 2 McCarty, 441; 13 W. Dig., 87; 93 N. Y., 474; 40 N. Y. Supr., 463; 69 N. Y., 518; 35 Hun, 220; 7 Bosw., 493; 9 Abb., 168; 17 How. Pr., 487; 10 Hun, 143; 64 N. Y., 185; 5 How. Pr., 390; 26 N. Y., 75.

CHAPTER VI.

PROVISIONS RELATING TO ELEVATED RAILROADS.

- SECTION 9. Elevated railroads in cities; abandonment of part of route.
10. Hours of labor upon elevated and surface street railroads.
 11. Railroads in New York city, when may be constructed in streets.
 12. Elevated railroads forbidden in certain streets in New York city.
 13. The same not permitted in parts of Broadway, Fifth and Fourth avenues, and in parks, etc.
 14. Elevated or steam railroads not to be built in Washington street, Brooklyn, except, etc.
 15. Intoxication of railroad employees.
 16. Improvement of elevated railroad structures in New York city.

§ 9. ELEVATED RAILROADS IN CITIES ; ABANDONMENT OF PART OF ROUTE, LAWS OF 1891, CHAPTER 294.

SECTION 1. *Abandonment of unnecessary portion by declaration of directors; notice to be given to stockholders thereof.*—Any company operating an elevated railway or railways in any city of this state for the transportation of passengers, mails or freight, and which, prior to the passage of this act shall have built and operated six-tenths of its route as set forth and embraced in its articles of incorporation, may declare relinquished* and abandoned any portion of its said route, which it may deem no longer necessary for the successful operation of its road and the convenience of the public. Such declaration of abandonment to be valid, shall be adopted by the board of directors, under the seal of such company, and shall be submitted to the stockholders thereof at a meeting, called for the purpose of taking the same into consideration. Due notice of the time and place of holding said meeting, and stating the object thereof shall be given by the company to its stockholders by written or printed notices addressed to each of the persons in whose name the capital stock of the company stands on the books thereof, at the address of such persons as stated on the books, or as known to the secretary of the company, and delivered or mailed to such persons, or the legal representatives of such persons, respectively, at least thirty days before the

* So in the original.

time of holding the meeting of such company, and also by a general notice published daily for at least four weeks in some newspaper last designated for the publication of the session laws or of judicial proceedings and legal notices in the county where the route of such company is located.

If stockholders and railroad commissioners approve of the declaration, a certificate to that effect will be filed with secretary of state.—And at the said meeting of stockholders the declaration of the said directors shall be considered and a vote by ballot taken for the adoption or rejection of the same, each share entitling the holder thereof to one vote, and said ballots shall be cast in person or by proxy, and if two-thirds of all the votes of the stockholders cast in person or by proxy at said meeting shall be for the adoption of said declaration of abandonment, then that fact shall be certified thereon by the secretary of the company under the seal thereof, and the declaration so adopted shall be submitted for approval to the state board of railroad commissioners, and if approved by them, such approval shall be indorsed thereon, and the said declaration so certified and indorsed shall be filed and recorded in the office of the secretary of state, and from the time of such filing such portion of said route designated, in such declaration of such company shall be deemed to be abandoned. A copy of such declaration of abandonment, duly certified by the secretary of state, under his official seal, shall be presumptive evidence in all courts and places of the facts which it recites, and of the regularity of the proceedings resulting in such abandonment.

§ 10. HOURS OF LABOR UPON ELEVATED AND SURFACE STREET RAILROADS. LAWS OF 1886, CHAPTER 151, AS AMENDED BY LAWS OF 1887, CHAPTER 529.

SECTION 1. *In cities of 100,000 inhabitants.*—Ten hours' labor to be performed within twelve consecutive hours, with reasonable time for meals, shall constitute a days' labor in the operation of all street surface and elevated railroads owned or operated by corporations incorporated under the laws of this state, whose main line of travel, or whose routes lie principally within the corporate limits of cities of more than 100,000 inhabitants, whatever motive power may be used in the operation of such railroads.¹

§ 2. *Violation of act a misdemeanor.*—It shall be a misdemeanor for any officer or agent of any such corporation to exact from any

of its employees more than ten hours' labor, the same to be performed within twelve consecutive hours, with not less than one-half hour for dinner, constituting a day; provided, however, that in cases of accident or unavoidable delay, extra labor may be permitted for extra compensation.

§ 3. *How applicable.*—This act shall not affect contracts now in force, nor apply to existing corporations whose charters are not subject to alteration, modification or repeal.

§ 4. *Repeal.*—All acts inconsistent with this act are hereby repealed.

§ 11. RAILROADS IN NEW YORK CITY. WHEN MAY BE
CONSTRUCTED IN STREETS. LAWS OF 1882, CHAPTER
410, SECTION 1943.

It shall not be lawful to lay, construct, or operate any railroad in, upon, or along any or either of the streets or avenues of the city, wherever such railroad shall commence or end, except under the authority and subject to the regulations and restrictions which the legislature may have granted since the thirteenth day of January, eighteen hundred and sixty, or may hereafter grant or provide. This section shall not be deemed to affect the operation as far as laid, of any railroad at such date constructed and duly authorized. Nor shall it be held to impair, in any manner, any valid grant for or relating to any railroad in said city, existing on the first day of January, eighteen hundred and sixty.

§ 12. ELEVATED RAILROADS FORBIDDEN IN CERTAIN STREETS
IN NEW YORK CITY. LAWS OF 1882, CHAPTER 410,
SECTION 1944.

It shall not be lawful to grant, use, or occupy for the purposes of an elevated railroad any portion of the following named streets and places, that is to say, Second avenue below Twenty-third street, Nassau street, Printing House square, so called, south of Frankfort street, Park row, Broadway south of Murray street, Broad street and Wall street. But nothing herein contained shall be construed to take away any right given by the report of the rapid transit commissioners, so called, or any existing right to cross at an elevation any of said streets, or to affect any act passed before June nineteenth, eighteen hundred and seventy-nine, restricting the right to use or occupy any of said streets.

¹ 10 N. Y. S., 907; 57 Hun, 379; 26 N. C., 662.

§ 13. THE SAME. NOT PERMITTED IN PARTS OF BROADWAY, FIFTH AND FOURTH AVENUES, AND IN PARKS, ETC., LAWS OF 1882, CHAPTER 410, SECTION 1946.

It shall not be lawful for commissioners appointed pursuant to the provisions of chapter six hundred and six of the Laws of eighteen hundred and seventy-five or the amendments thereof to locate the route or routes of any railway over, under, through or across Broadway or Fifth avenue, below Fifty-ninth street, Fourth avenue above Forty-second street, in the city of New York, nor over, under, through or across such portions of streets and avenues as are already legally designated for the main line of or occupied by an elevated or underground railway, in actual operation, nor over, under, through or across such as are contained in public parks, nor over, under, through, or across such as are occupied by buildings belonging to the county, or to this state, or to the United States.¹

§ 14. ELEVATED OR STEAM RAILROADS NOT TO BE BUILT IN WASHINGTON STREET, BROOKLYN, EXCEPT, ETC., LAWS OF 1882, CHAPTER 182, SECTION 1.

None of the provisions of existing law shall authorize the construction or operation of any elevated, surface or underground steam railway upon Washington street, from High street to the junction of Fulton street, Myrtle avenue and the said Washington street in the city of Brooklyn, except that the consent of a majority of the owners of property, in numbers and in value thereof, on that portion of Washington street herein described, be first obtained in writing.

§ 15. INTOXICATION OF RAILROAD EMPLOYEES, LAWS OF 1875, CHAPTER 606, SECTION 31.

If any person shall, while in charge of a locomotive engine running upon the railroad of any such corporation, or while acting as the conductor of a car or train of cars on any such railroad, be intoxicated, he shall be deemed guilty of a misdemeanor.

§ 16. IMPROVEMENT OF ELEVATED RAILROAD STRUCTURES IN NEW YORK CITY.

See Laws of 1885, chapter 554.

¹ See in connection with the three preceding sections, Laws of 1879, ch. 529, sec. 1; Laws of 1890, ch. 565, sec. 123.

CHAPTER VII.

STREET SURFACE RAILROADS.

- SECTION 17. Restrictions in the constitution, consents of property owners to be first obtained.
18. Street railroads, corporate existence and powers of certain, continued.
 19. Form of annual report of horse railroad companies.
 20. Obstruction of railway travel in cities by processions and parades forbidden.
 21. Use of salt on railroad tracks, when permitted.
 22. Processions not to interfere with railway travel in New York city.
 23. Railway companies in New York city must provide and use hose bridges.
 24. Railroads in the streets and avenues of New York city.
 25. Street railroads in Buffalo and rates, and additional rates of fare for children.
 26. Street railroads forbidden in parks in the city of Buffalo.
 27. Rates of fare on street railroads in Buffalo.
 28. Brooklyn, use of steam and surface railroads upon Atlantic avenue forbidden, after elevated railroad built, etc., except, etc.

§ 17. RESTRICTIONS IN THE CONSTITUTION. CONSENT OF PROPERTY OWNERS TO BE FIRST OBTAINED. CONSTITUTION OF N. Y., ARTICLE 3, SECTION 18.

No law shall authorize the construction or operation of a street railroad, except upon the condition that the consent of the owners of one-half in value of the property bounded on and the consent also of the local authorities having the control of that portion of a street or highway upon which it is proposed to construct or operate such railroad be first obtained, or in case the consent of such property owners cannot be obtained, the general term of the supreme court in the district in which it is proposed to be constructed, may, upon application, appoint three commissioners, who shall determine, after a hearing of all parties interested, whether such railroad ought to be constructed or operated, and their determination, confirmed by the court, may be taken in lieu of the consent of the property owners.¹

¹ 11 N. Y. S., 162; 115 N. Y., 447; 96 id., 158; 31 Hun, 73; 32 id., 84, 85; 28 id., 476; 39 id., 223; 12 Daly, 504, 508; 92 N. Y., 58, 348; 47 Hun, 186; 107 N. Y., 50, 159; 15 St. R., 979; 5 Abb N. C., 383; 70 N. Y., 327, 361; 75

§ 18. STREET RAILROADS; CORPORATE EXISTENCE AND POWERS OF CERTAIN, CONTINUED. LAWS OF 1891, CHAP. 287, SEC. 1.

The corporate existence and powers of every railroad company owning and operating a street or surface railroad wholly within a town, village or city, in which the population of such city, village or town is less than twenty thousand, and which has completed a railroad upon a portion of the route designated in its articles of association, within ten years from the date of filing such articles of association, and which has operated its said railroad continuously for a period of ten years last past, and is now operating the same, shall continue with like force and effect as though said company had in all respects and particulars complied with the provisions of chapter seven hundred and seventy-five of the Laws of eighteen hundred and sixty-seven, entitled: "An act to amend an act entitled, an act to authorize the formation of railroad corporations and regulate the same, passed April second, eighteen hundred and fifty, and the amendments thereto.

§ 19. FORM OF ANNUAL REPORT OF HORSE RAILROAD COMPANIES.

The requirements of section thirty-one of the act entitled "An act to authorize the formation of railroad corporations, and to regulate the same," passed April second, eighteen hundred and fifty, shall not apply to street or horse railroads, except as hereinafter provided. (Laws 1867, chap. 906, § 1.)¹

Every railroad corporation in this state whose road is operated by horse power exclusively, or by steam dummy cars exclusively, or partly by horse power and partly* steam dummy cars, and every such railroad corporation which shall hereafter be organized, shall make an annual report to the state engineer and surveyor, or the operations of the year ending on the thirtieth day of Sep-

id., 335; 67 id., 564; 86 id., 1; 89 id., 75; 92 id., 128; 93 id., 313; 95 id., 135; 98 id., 146, 585; 99 id., 538, 569; 102 id., 48, 343, 471; 42 Hun, 621; 3 Abb. N. C., 467, 476; 13 Daly, 252; 33 Hun, 220; 34 id., 422, 442; 37 id., 446; 39 id., 223; 40 id., 20; 41 id., 425; 42 id., 227, 601; 30 Hun, 98; 29 id., 303, 391, 626; 28 id., 469, 476; 27 id., 582; 26 id., 492; 82 N. Y., 95; 25 Abb. N. C., 378n, 379n; 54 Hun, 401n; 56 Hun, 539; 112 N. Y., 585, 587; 112 id., 72; 1 How. Pr. N. S., 455; 116 N. Y., 186; 121 id., 540; 10 N. Y. S., 838; 51 Hun, 113; 113 id., 111; 2 How. Pr. N. S., 182; 45 Hun, 326, 528; 47 id., 186.

¹ 115 N. Y., 447.

* So in the original.

tember; which report shall be verified by the oaths of the the treasurer or president and acting superintendent of operations, and be filed in the office of the state engineer and surveyor by the first of December in each year, and shall state ;

1. The amount of capital stock.
2. The amount of stock subscribed.
3. The amount paid in as by last report.
4. The total amount now of capital stock paid in.
5. The funded debt as by last report.
6. The total amount now of funded debt.
7. The floating debt as by last report.
8. The amount now of floating debt.
9. The total amount now of funded and floating debt.
10. The average rate per annum of interest on funded debt.

Cost of road and equipment.

11. For road bed and superstructure, including iron, by last report.
12. The total amount now expended for the same.
13. For land, buildings and fixtures, including land damages, by last report.
14. The total amount now expended for the same.
15. For dummy cars, horses, mules and harness, by last report.
16. The total amount now expended for the same.
17. For cars and sleighs, by last report.
18. The total amount now expended for the same.
19. Total cost of road and equipment.

Characteristics of road.

20. Length of road, in miles.
21. Length of road laid.
22. Length of double track, including sidings.
23. Weight of rail, by yard.
24. The number of dummy cars, of cars, and of horses and mules.
25. The total number of passengers carried in cars.
26. The total number of tons of freight carried in cars.
27. The rates of fare for passengers.
28. The average time consumed by passenger cars in passing over the road.

Expenses of maintaining the road and real estate.

29. Repairs of road bed and railway (including iron), and repairs of buildings and fixtures.
30. Taxes on real estate (to include all taxes except for United States revenue.)
31. Total cost of maintaining road and real estate.

Expenses of operating road, and for repairs.

32. General superintendence.
33. Officers, clerks, agents and office expenses.
34. Conductors, drivers and engineers on dummy cars.
35. Watchmen, starters, switchmen, roadmen, etc.
36. Repairs of dummy cars.
37. Repairs of cars and sleighs.
38. Repairs harness, including material and labor.
39. Horseshoeing, including materials and labor.
40. Horses and mules.
41. Stable expenses.
42. Feed, grain, hay, etc., including expenses of grinding.
43. Fuel, gas and lights.
44. Oil and waste.
45. Water tax.
46. Damages to persons and property, including medical attendance.
47. Law expenses.
48. Rents, including use of other roads, ferries, etc.
49. Insurance.
50. Advertising and printing.
51. United States tax on earnings.
52. Contingencies.
53. Total expense of operating road and repairs.
54. Receipts from passengers.
55. Receipts from freight.
56. Receipts from all other sources, specifying what, in detail.
57. Total receipts from all sources during the year.
58. Payments for transportation, maintenance and repairs.
59. Payments for interest.
60. Payments for dividends on stock, amount and rate per cent.
61. All other payments, specifying what, in detail.
62. Total payments during the year.
63. The number of persons injured in life and limb; the cause

of the injury, and whether passengers, employees or other persons. Also, whether such accidents have arisen from carelessness or negligence of any person in the employment of such corporation, and whether such person is retained in the service of the corporation. (*Laws 1867, chap. 906, § 2*).¹

§ 20. OBSTRUCTION OF RAILWAY TRACKS IN CITIES BY PROCESSIONS AND PARADES FORBIDDEN. LAWS OF 1872, CHAP. 590.

SECTION 1. No procession or parade shall use any street upon the surface of which is a railway track or tracks by marching upon the said track or tracks, and a free passage of cars upon railway tracks shall not be interfered with by the formation, halt or march of any such procession or parade, or of the persons composing it. Whenever any procession shall find it necessary to march across a railway track, the portion of said procession which in so marching is likely to stop the passage of any car or cars upon said track shall come to a halt in order to permit said car to proceed.

§ 2. *Notice to be given of certain parades, processions, etc.*—All processions or parades, occupying or marching upon any street of any city to the exclusion or interruption of other citizens in their individual right of use thereof (excepting the national guard and the police and fire departments and associations of veteran soldiers, are forbidden, unless written notice of the object, time and route of such procession or parade be given by the chief officer thereof, not less than six hours previous to its forming or marching, to the police authorities of said city; and it may be lawful for said police authorities to designate to such procession or parade how much of the street in width it can occupy with especial reference to crowded thoroughfares through which said procession may move; and when so designated, the chief officer of said procession or parade shall be responsible that the designation is obeyed; and it shall be the duty of the police authorities to furnish such escort as may be necessary to protect persons and property, and maintain the public peace and order.² As amended by L. 1886, ch. 543, sec. 1.

¹ This provision seems to be unrepealed; and although it seems that the railroad commissioners do not use this form for reports of horse railroads it is inserted for convenience of reference.

² § 3 repealed by L. 1886, c. 583, § 1, ¶ 47.

§ 4. *Penalty*.—Every person willfully violating any provision of this act shall be guilty of a misdemeanor, punishable with a fine not exceeding twenty dollars, or imprisonment not exceeding ten days, or both at the discretion of the court.

§ 21. USE OF SALT ON RAILROAD TRACKS, WHEN PERMITTED.
LAWS OF 1882, CHAP. 410, § 1938.

Every person who shall throw, expose, or place, or who shall cause or procure to be thrown, exposed, or placed in or upon any such street, highway, or public place, except upon the curves, crossings, or switches of railroad tracks, any salt, saltpeter, or other substance for the purpose of dissolving any snow or ice which may have fallen or been deposited thereon, shall be deemed guilty of a misdemeanor.¹

§ 22. PROCESSIONS NOT TO INTERFERE WITH RAILWAY TRAVEL
IN NEW YORK CITY. LAWS OF 1882, CHAP. 410, § 1939.

No procession or parade shall use any street, upon the surface of which is a railway track or tracks, by marching upon the said track or tracks; and a free passage of cars upon railway tracks shall not be interfered with by the formation, halt, or march of any such procession or parade, or of persons composing it. Whenever any procession shall find it necessary to march across a railway track, the portion of said procession which, in so marching, is likely to stop the passage of any car or cars upon said track, shall come to a halt in order to permit said car to proceed.

§ 23. RAILWAY COMPANIES IN NEW YORK CITY MUST PROVIDE
HOSE BRIDGES. LAWS OF 1882, CHAP. 410, § 445.

The board of fire commissioners is empowered to provide for the laying on the railway tracks of the city, over the hose used by the department for the extinguishment of fires, of such hose-bridges as they may deem necessary; and the various horse and steam railway companies running cars within the limits of the city of New York shall provide and use such hose-bridges as may be designated by the board of commissioners of the fire department. Such bridges shall be paid for by the railway companies using the same.

¹ 15 St. R., 939; 25 Abb. N. C., 39 n.

§ 24. RAILROADS IN THE STREETS AND AVENUES OF NEW YORK
YORK. LAWS OF 1860, CHAP. 10, SEC. 1.

It shall not be lawful hereafter to lay, construct or operate any railroad in, upon or along any or either of the streets or avenues of the city of New York, wherever such railroad may commence or end, except under the authority and subject to the regulations and restrictions, which the legislature may hereafter grant and provide. This section shall not be deemed to affect the operation, as far as laid, of any railroad now constructed and duly authorized. Nor shall it be held to impair, in any manner, any valid act for or relating to any railroad in said city, existing on the first day of January, eighteen hundred and sixty.¹

§ 25. STREET RAILROADS IN BUFFALO, RATES AND ADDITIONAL
RATES OF FARE FOR CHILDREN. LAWS OF 1885, CHAP.
229, SEC. 4, AS AMENDED BY LAWS OF 1886, CHAP. 431,

The several street railroads in Buffalo shall carry children under five years old free, when accompanied by a parent or guardian, but such children shall not be entitled to a seat when such seat is needed by a passenger paying fare. The several street railroad companies in the city of Buffalo shall keep for sale on all cars running on their roads passenger tickets in packages of not more than five each, which shall be sold at the rate of three cents for each ticket, and each ticket or a three-cent cash fare shall entitle any child between five years and twelve years to a passage over any one of the above routes or any distance on any one of the roads operated by the Buffalo Street Railroad Company, or the Buffalo East Side Street Railroad Company. It shall be unlawful for any street railroad company in the city of Buffalo to ask or receive from any passenger between the ages of five and twelve years desiring to be transferred from its cars to the cars of another street railroad company, more than two cents in additional to the fare already paid by such passenger, which additional fare shall entitle such passenger to a continuous passage for any distance on

¹ 115 N. Y., 446; 32 St. R., 553; 103 N. Y., 475; 107 id., 42; 112 id., 400, 403; 1 How. P. N. S., 458; 15 St. R., 979; 45 Barb., 67; S. C., 30 How Pr., 12. See 51 Barb., 277; 32 How. Pr., 481.

Included in New York City Consolidation Act. Laws 1882, chap. 410, sec. 1943. For an act for transporting passengers, etc., in certain streets and avenues in the upper part of New York city, see Laws 1873, chap. 825, amended by chap. 483 of Laws of 1875.

the road of such company (except to the park), by or on whose account such fare shall be paid. And for the violation of any provision of this section, each of said companies so offending shall forfeit, for each and every offense or violation of any provision of this section, as a penalty, the sum of fifty dollars, to be sued for and recovered with costs of suit, by any person in his own name, in any court having jurisdiction thereof.

§ 26. STREET RAILROADS FORBIDDEN IN PARKS IN THE CITY OF BUFFALO. LAWS OF 1869, CHAPTER 165, SECTION 25.

The said the park commissioners shall have power upon such terms, or upon the payment of such yearly license fee or per capita tax as the park commissioners may prescribe, to grant to any street railway company in said city the privilege of laying down and operating a railway, for the carriage of passengers only, through the said connecting streets and approaches; but no street or other railway shall enter upon, in or through the said park or parks.¹

§ 27. RATES OF FARE ON STREET RAILROADS IN BUFFALO. LAWS OF 1875, CHAPTER 600, SECTIONS 1 AND 2 AMENDED AND CONSOLIDATED BY LAWS OF 1877, CHAPTER 202, SECTION 1. CERTAIN COMPANIES MUST KEEP PACKAGES OF TICKETS FOR SALE ON.

The Buffalo Street Railroad Company shall keep for sale on all cars running on its road passenger tickets in packages of not more than ten each, which shall be sold at the rate of six cents for each ticket, and each ticket shall entitle the holder thereof to one passage between the foot of Main street and Amherst street on Niagara street or for any distance on Main street. Said Buffalo Street Railroad Company shall also keep on sale on all its cars running on its road passenger tickets in packages of not more than ten, which shall be sold at the rate of five cents each ticket, and each ticket shall entitle the holder thereof to one passage between the foot of Main street and Jersey street, or between Amherst street and Jersey street on Niagara street, or between foot of Main street and Allen street. It shall be unlawful for the said Buffalo Street Railroad Company to charge, ask, or receive more than six cents for carrying any passenger on its roads between the

¹15 N. Y. St. R., 583.

foot of Main street and Allen street, or between the foot of Main street and Jersey street, or between Jersey street and Amherst street. The Buffalo East Side Street Railway Company shall keep for sale on all cars running on its road passenger tickets in packages of not more than five each, which shall be sold at the rate of five cents for each ticket, and each ticket shall entitle the holder thereof to one passage between Main street and the easterly terminus of any one of the roads now constructed and its connection with Main street.

§ 3. *Rates upon transfer for children; exceptions.*—It shall be unlawful for any street railroad company in Buffalo to ask or receive from any passenger desiring to be transferred from the cars of another street railroad company, or from the cars of the same street railroad company, more than three cents in addition to the fare already paid by said passenger, which additional fare shall entitle such passenger to a passage for any distance on the road of such company, by or on whose account such fare shall be received, and the several street railroad companies are required to so run their cars, that persons desiring to be transferred from the cars of one company to the cars of another, may not be delayed, nor shall it be lawful for any street railroad company in Buffalo to ask or receive more than three cents for carrying children under ten years of age, nor children of any age going to or returning from any public or private school, riding any distance in one direction on the road or roads of any company herein mentioned, except that in case of transfer as above provided, two cents in addition thereto may be charged as the fare of the company receiving such passenger, by or on account of the company receiving the same, and which shall entitle such passenger to ride any distance in one direction on such road. The provisions of this section shall apply to passengers on the Buffalo street railroad from Niagara street to Main street, and going north on Main street, and to passengers from Main street to Niagara street and going up Niagara street, and such passengers may remain upon the cars upon which they have taken passage until they meet a car going upon the road to which they would be transferred.¹

¹ 111 N. Y., 137.

NOTE.—See an act for the relief of the city of Buffalo and to change and regulate the crossing and occupation of streets, avenues and public grounds in said city by railroads. Laws of 1888, c. 345, as amended by L. 1890, c. 555.

§ 28. BROOKLYN, USE OF STEAM AND SURFACE RAILROADS UPON ATLANTIC AVENUE FORBIDDEN AFTER ELEVATED RAILROAD BUILT, ETC., EXCEPT, ETC. LAWS OF 1885, CHAPTER 410.

SECTION 1. From and after the completion by the Brooklyn and Long Island Cable Railway Company of an elevated railway upon Atlantic avenue, in the city of Brooklyn, from South Ferry, to and as far as east of Brooklyn avenue, or from the bridge terminus to and as far as east of Brooklyn avenue, it shall not be lawful for the Long Island Railroad Company or for the Atlantic Avenue Railroad Company, or for any other company or individual, to operate cars by steam upon the surface of Atlantic avenue, west of Brooklyn avenue, excepting freight cars, and those only between the hours of twelve o'clock midnight and four o'clock in the morning.

§ 2. From and after the completion of the elevated railway aforesaid upon the said Atlantic avenue, from the South Ferry to and as far as the city line, or from the bridge terminus to and as far as the city line, it shall not be lawful for either of said railroad companies, or for any company or individual to operate cars by steam upon the surface of Atlantic avenue at any point within the limits of the city of Brooklyn, excepting freight cars, and those only between the hours of twelve o'clock midnight and four o'clock in the morning.

§ 3. All acts and parts of acts inconsistent with this act are hereby repealed.

CHAPTER VIII.

MUNICIPAL BONDS ISSUED IN AID OF RAILROADS.

SECTION 29. No municipal aid or credit to be given toward the construction of railroads.

30. Renewal of municipal aid bonds.

31. The same.

32. Payment and refunding of municipal aid bonds.

33. Issue of bonds in place of those lost or destroyed.

34. Railroad commissioners of towns to present bonds paid, with account thereof; and to reinvest balance in their hands.

35. Sale of stock and bonds of bankrupt railroads by municipal corporations holding the same; disposition of proceeds.

36. Municipal corporations may pay their railroad bonds with railroad stock and bonds, and exchange railroad stock for their own bonds.

37. Payment of municipal aid bonds.

§ 29. NO MUNICIPAL AID OR CREDIT TO BE GIVEN TOWARD THE CONSTRUCTION OF RAILROADS. CONSTITUTION OF NEW YORK, ARTICLE 8, SECTIONS 10 AND 11. AMENDED NOVEMBER 3, 1874.

§ 410 (α). Neither the credit nor the money of the State shall be given or loaned to or in aid of any association, corporation or private undertaking. * * *

No county, city, town, or village shall hereafter give any money or property, or loan its money or credit, to or in aid of any individual, association or corporation, or become, directly or indirectly, the owner of stock in or bonds of any association or corporation, nor shall any such county, city, town or village be allowed to incur any indebtedness, except for county, city, town, or village purposes.¹ * * *

§ 30. RENEWAL OF MUNICIPAL AID BONDS. LAWS OF 1881, CHAPTER 522, AS AMENDED BY LAWS OF 1883, CHAPTER 453.

SECTION 1. *Present bonded indebtedness may be paid by issue of new bonds; proviso as to rate of interest; cancellation of bonds taken*

¹ 39 Hun, 376; 29 id., 391, 394; 76 N. Y., 475; 99 id., 586; 101 id., 490; 102 id., 313; 5 Hun, 475, 485; 39 id., 370; 40 id., 190, 194; 93 N. Y., 313, 315; 5 N. Y. S., 878; 96 N. Y., 137, 432; 29 Hun, 391; 4 Hill, 384; 11 N. Y. S., 114, 117.

up ; when new bonds to be payable.—The present bonded indebtedness of any village, city, town or county in this State, including interest past due and unpaid, may be paid up or retired by the issue of new bonds for like amount by the board of trustees, mayor and common council, town board, board of supervisors or supervisor, or railroad commissioners, or officer or officers, now having in charge according to law the payment of interest and principal on bonds herein proposed to be paid and retired, respectively, of such village, city, town, or county ; provided, however, that such new bonds shall be issued only when existing bonds can be retired by the substitution therefor of such new bonds or can be paid up by money realized on the sale of new bonds ; and provided further that such new bonds shall bear interest at a rate not exceeding five per cent per annum, payable semi-annually. All existing bonds taken up by the substitution of such new bonds or paid under the provisions of this act shall be immediately canceled, and a certificate executed by the officers issuing such new bonds shall be forthwith made and filed by them in the county clerk's office of the proper county, which shall state the amount of existing bonds so canceled and of new bonds so issued. This act shall not be so construed as to authorize the issue of new bonds to supersede or pay existing bonds which have been adjudged invalid by the final judgment of a competent court. The new bonds so to be issued shall be made payable at any period or periods deemed advisable by the officers issuing the same, not less than two years or more than thirty years from their date ; and shall bear date and draw interest from the date of the payment of existing bonds, or the receipt of money to pay existing bonds ; and shall be issued in no case at less than for their par value. (*Thus amended, chap. 453, Laws of 1883.*)

§ 2. *New bonds to be valid ; recital in same.*—The bonds issued under the provisions of this act when substituted or sold to retire existing bonds, by any authorized officers of any town, village, city or county, or their successors in office, shall be valid and binding on the town, village, city or county wherein they are issued, and such bonds shall contain a recital that they are issued under the provisions of this act, and such recital shall be conclusive evidence in any court of the validity of said bonds and the regularity of their issue.

§ 3. *New bonds exempt from taxation.*—All new bonds issued by any village, city, town or county in this State, under the pro-

visions of this act, shall be exempt from taxation for town, county, municipal or State purposes until the period when they are made payable.

§ 4. *Commissioners, supervisors and financial officers required to report annually; to whom to report, and what.*—It shall be the duty of the railroad commissioners, supervisors and financial officers of towns, villages, cities and counties, having in charge the moneys received and collected, and responsible for the payment of the interest and principal due on bonds issued under this act, and they are hereby required to report annually to the board of supervisors of counties, the trustees of villages and the mayor and board of aldermen or common council of cities, as the case may be, as now required by law, the sum due and payable the succeeding year, both principal and interest on said bonds.

§ 5. *Tax to pay bonds.*—It shall be the duty of the boards of supervisors of counties, the trustees of villages, and the boards of aldermen, and the common councils of cities, and they are hereby required to levy and collect in each year upon the towns, villages, cities or counties severally obligated, moneys sufficient to pay such interest when and as it shall fall due, and the principal of such bonds when and as the same shall become due and payable.

§ 31. THE SAME.

SECTION 1. *Indebtedness may be paid by issue of new bonds; proviso; existing bonds to be canceled; construction of act; new bonds, when to be made payable.*—Section 1 of chapter 522 of the Laws of 1881, entitled “An act in relation to the bonded indebtedness of villages, cities, towns and counties in this State, created in aid of railroads,” is hereby amended so as to read as follows:

§ 1. The present bonded indebtedness of any village, city, town or county in this State, which was created to aid in the construction of any railroad, or which was created in the renewal or extension of any such indebtedness, or of any part thereof, may be paid up or retired, in whole or in part, whether due or to fall due by the issue of a new bond or bonds by the board of trustees, mayor and common council, town board, board of supervisors, or supervisor or railroad commissioners, or officer or officers now having in charge, according to law, the payment of interest and principal on bonds herein proposed to be paid and retired, respectively, of such village, city, town or county; provided, however, that such new bond or bonds shall be issued only when the existing

bond or bonds can be retired by the substitution therefor of such new bond or bonds; or can be paid up by money realized on the sale of such new bond or bonds; and, provided, further, that such new bond or bonds shall bear interest at a rate not exceeding five per centum per annum, payable semi-annually. Any existing bond or bonds taken up by the substitution of such new bond or bonds, or paid under the provisions of this act, shall be immediately canceled, and a certificate executed officially by the officer or officers issuing such new bond or bonds shall be forthwith made and filed by him or them in the county clerk's office of the proper county, which shall state the amount of the existing bond or bonds so canceled, and of the new bond or bonds so issued. This act shall not be so construed as to authorize the issue of new bonds to supersede or pay existing bonds which have been adjudged invalid by the final judgment of a competent court. The new bond or bonds issued under the provisions of this act shall be made payable at any period deemed advisable by the officer or officers issuing the same, not less than two years nor more than thirty years from their date, and shall bear date and draw interest from the date of the payment of the existing bond or bonds, and shall be issued in no case at less than their par value. (*See, however, section 1, chap. 522, Laws of 1881, as amended by chap. 453, Laws of 1883, supra.*)

§ 32. PAYMENT AND REFUNDING OF MUNICIPAL AID BONDS. LAWS OF 1886, CHAPTER 316.

SECTION 1. *Bonded indebtedness, how paid up or retired; rate of interest on new bonds; old bonds to be canceled.*—The present bonded indebtedness of any village, city, town or county in this State, including interest past due and unpaid, may be paid up or retired by the issue of new bonds for like amounts by the board of trustees, mayor or common council, town board, board of supervisors or supervisor, or railroad commissioners or officer or officers now having in charge according to law the payment of interest or principal on bonds herein proposed to be paid or retired respectively of such village, city, town or county; provided, however, that such new bonds shall be issued only when existing bonds can be retired by the substitution therefor of such new bonds or can be paid up by money realized on the sale of such new bonds, but where the said bonded indebtedness shall become due within two

years from the issue of the said new bonds, then such new bonds may be issued or sold to provide money in advance, with which to pay up such existing bonds, when they shall become due and payable; and provided further, that such new bonds shall bear interest at a rate not exceeding four per cent per annum, payable semi-annually or quarterly. All existing bonds taken up by the substitution of such new bonds, or paid under the provisions of this act, and all new bonds and coupons, when paid up as herein provided, shall be immediately canceled as now provided by law, and a certificate executed by the officers issuing such new bonds shall be forthwith made and filed by them in the county clerk's office of the proper county, which shall state the amount of existing bonds so canceled and of new bonds so issued. This act shall not be so construed as to authorize the issue of new bonds to supersede or pay existing bonds which have been adjudged invalid by the final judgment of a competent court. The new bonds so to be issued shall be made payable at any period or periods deemed advisable by the officers issuing the same, not less than one nor more than forty years from their date; and shall bear date and draw interest from the date of the payment of existing bonds, or the receipt of the money to pay existing bonds; and an amount not less than two per cent of the whole amount of said bonds so issued shall be made payable and shall be paid and retired, each and every year after the issue thereof, and said bonds shall be issued in no case at less than for their par value.

§ 2. *Validity.*—The bonds issued under the provisions of this act when submitted* or sold to retire existing bonds, by any authorized officers of any town, village, city or county, or their successors in office, shall be valid and binding on the town, village, city or county wherein they are issued, and such bonds shall contain a recital that they are issued under the provisions of this act, and such recital shall be conclusive evidence in any court of the validity of said bonds and the regularity of their issue.

§ 3. *Exempt from taxation.*—All new bonds issued by any village, city, town or county in this State, under the provisions of this act, shall be exempt from taxation for town, county, municipal or State purposes, until the period when they are made payable.

§ 4. *Duty of railroad commissioners.*—It shall be the duty of the railroad commissioners, supervisors and financial officers of

* So in original.

towns, villages, cities and counties, having in charge the money received and collected, and responsible for the payment of the interest and principal due on bonds issued under this act, and they are hereby required to report annually to the board of supervisors of counties, the trustees of villages and the mayor and board of aldermen, or common council of cities as the case may be, as now required by law, the sum due and payable the succeeding year, both principal and interest, on said bonds.

§ 5. *Duty of boards of supervisors, common councils, etc.*—It shall be the duty of the boards of supervisors of counties, the trustees of villages, and the board of aldermen and the common council of cities, and they are hereby required to levy and collect in each year upon the towns, villages, cities or counties severally obligated, moneys sufficient to pay such interest when and as it shall fall due, and the principal of such bonds when and as the same shall become due and payable.

§ 6. *Commissioners to give bonds.*—Before the said commissioners or either of them shall enter upon the discharge of their duties under this act, they shall jointly and severally with two or more sureties execute to the supervisor of said town or city a bond in the penal sum equal to one-fourth the amount to be issued by said town or city under and by virtue of this act, conditioned for the faithful discharge of their duties as commissioners under this act and existing laws, and for the just and honest application by them of all moneys or bonds issued by them or coming into their hands as such commissioners. The sufficiency of said sureties shall be determined by the supervisor of said town or city, or the county judge of the county wherein said town is situated, or any justice of the Supreme Court, and shall be indorsed on said bonds. The said bonds shall immediately thereafter be deposited with the supervisor or supervisors of said town or city, to be collected by him or his successors in office for the use and benefit of said town or city, in case the said commissioners, or either of them, are guilty of such a breach of duty or malfeasance in office as to render said bonds collectible; and it is further provided, that any willful appropriation or embezzlement or wrongful conversion of any said town bonds, or the moneys arising from the same, or the moneys to be raised by a sale thereof, as provided by this act, or of moneys to be raised by tax as aforesaid to an amount exceeding \$1,000, shall be a felony punishable by imprisonment in the State prison for a term not exceeding ten years.

§ 33. ISSUE OF BONDS IN PLACE OF THOSE LOST OR DESTROYED. LAWS OF 1886, CHAPTER 278.

SECTION 1. *New bonds may be issued in lieu of those lost or destroyed; bond of indemnity requisite.*—The railroad commissioners of any of the towns in this State, which have heretofore issued its bonds in aid of the construction of any railroad, which bonds, or any of which, shall have been lost or destroyed before the same shall have become due, are hereby authorized to issue new bonds of such town in the place and stead thereof, under their hand and seal, for the amount, at the same rate of interest, and to become due at the same time as such lost or destroyed bond or bonds, and deliver the same to the owner of such lost or destroyed bond or bonds, upon such owner furnishing to such commissioners satisfactory proof, by affidavit, of such ownership, and of the loss or destruction of such bond or bonds, and filing with said commissioners a sufficient bond of indemnity, with at least two sureties, to be approved by said commissioner, and by the supervisor of the town, and by the county judge of the county in double the amount of such bonds so to be issued.

§ 2. *Contents of new bond.*—The new bond or bonds so issued shall state upon the face thereof the denomination and number of the bonds in the place and stead of which they are issued, which said bonds shall be signed by the said railroad commissioners, and the coupons attached thereto, for interest, shall be signed by one of said commissioners, and said bonds countersigned by the town clerk of the town, and registered in the town clerk's office of such town in the record thereof.

§ 3. *Duty of railroad commissioners in the premises.*—It shall be the duty of the railroad commissioners to cause any such bond of indemnity, taken by them as provided in section one of this act, with their approval indorsed thereon, to be filed with the clerk of the county in which such town is situated, and the proofs of ownership, loss or destruction, to be filed in the office of the clerk of such town.

§ 34. RAILROAD COMMISSIONERS OF TOWNS TO PRESENT BONDS PAID, WITH ACCOUNT THEREOF; AND TO RE-INVEST BALANCE IN THEIR HANDS. LAWS OF 1871, CHAPTER 537, SECTION 1, AS AMENDED BY LAWS OF 1882, CHAPTER 293.

The commissioners appointed under and by virtue of the sev-

eral acts to facilitate the construction of railroads in this State, and who have been duly authorized under said laws to issue bonds of any town, city or village therein, are hereby required to present before the board of auditors of their respective towns, cities or villages, whose duty it is annually to examine and audit the receipts and disbursements of either town, city or village officers, at each annual meeting of said board of town auditors, or the auditing board in any city or village, all such bonds and coupons thereof which have been paid by them respectively during the year then ending; also to render a written statement or report annually to said board, showing in items all their receipts and expenditures, with vouchers. It shall be the further duty of said commissioners to loan on proper security or collaterals or deposit in some solvent bank or banking institution, at the best rate of interest they may be able to obtain, or invest in the bonds of their respective towns all moneys that shall come into their hands by virtue of their office, and not needed for current liabilities; and all interest or earnings accruing from such loans or deposits shall be credited to their respective towns, cities or villages, and accounted for in their annual settlement with the said board of auditors.

§ 35. SALE OF STOCK AND BONDS OF BANKRUPT RAILROADS BY MUNICIPAL CORPORATIONS HOLDING THE SAME; DISPOSITION OF PROCEEDS. LAWS OF 1875, CHAPTER 585.

SECTION 1. *Sale of stock or bonds authorized.*—Any municipal corporation within this State holding and owning any stock or mortgage bonds of any railroad company in this State which shall have been adjudicated bankrupt, or the property of which shall be in the possession of a receiver appointed under the laws of this State, or the railroad or other property of which shall have been sold, or shall have been deemed to be sold, by virtue of any decree of foreclosure of any mortgage executed by such railroad company, is hereby authorized to sell and dispose of such stock or mortgage bonds in the manner hereinafter provided.

§ 2. *When commissioners to give notice of sale; what notice to contain.*—The commissioner or commissioners of any municipal corporation within this State which shall have issued its bonds in aid of the construction of the railroad of any railroad company in this State within the provisions of section one of this act ap-

pointed to issue such bonds of any municipal corporation under any law of this State, or the successor or successors in office of any such commissioner or commissioners, on the application of the mayor and common council of any city, or of the board of trustees of any incorporated village, or of the supervisor of any town within this State, the bonds of which shall have been issued in aid of the construction of any such railroad, as aforesaid, shall forthwith publish a notice of the sale at public auction of the stock or mortgage bonds of any such railroad company held and owned by such municipal corporation as aforesaid, at such public place within the limits of such municipal corporation as such commissioner or commissioners may specify in such notice. The said notice shall specify the amount of such stock or bonds so held by said municipal corporation and the number of shares of such stock, and the amount of such bonds, respectively, and the name of the railroad company by which the same were issued, and shall be published in two newspapers published in the county wherein such railroad may be situated, or if it extends through or into more than one county, then in two newspapers published in each county wherein such railroad may be situated, at least once in each week after the first publication of such notice, until the day of sale, which shall be not less than ten nor more than twenty days after the first publication of the said notice.

§ 3. *Sale, how and when made.*—On the day and at the place of sale specified in the notice aforesaid, the said commissioner or commissioners shall sell at public auction, to the highest bidder for cash, all the stock or mortgage bonds of any such railroad company so held and owned by such municipal corporation as aforesaid, in such parcel or parcels as in their discretion shall be most advantageous to the said municipal corporation, and shall deliver the same to the purchaser or purchasers thereof, and shall execute to said purchaser or purchasers any transfer or assignment of such stock or bonds necessary to transfer the same; and thereupon the purchaser or purchasers of such stock or bonds shall be vested with all the right, title and interest of said municipal corporation, and of the said commissioner or commissioners in and to the stock or bonds so sold as aforesaid.

§ 4. *Proceeds of sale; disposition of.*—All moneys received by said commissioner or commissioners for any stock or mortgage bonds sold pursuant to the provisions of this act shall be immediately paid over to the treasurer or other officer of such muni-

cipal corporation having charge of its funds, in case of a town to the supervisor thereof for the use of such municipal corporation, and, after paying the expenses of such sale, shall be applied by such municipal corporation to the payment and extinguishment of its bonds issued in aid of said railroad company, and to no other purpose whatever; provided, that in case the municipal bonds so issued shall have been all paid before such sale, or in case the moneys realized from such sale shall be more than sufficient to pay off the municipal bonds issued as aforesaid in aid of such railroad corporation then outstanding, the proceeds of such railroad stock or bonds, or any such balance thereof, shall be applied by such municipal corporation to the payment of such other debt thereof, or to defray such other lawful charge thereupon as the common council of any such city, or the board of trustees of any such incorporated village, or the qualified voters of any such town, in town meeting, may direct.

§ 5. *Repeal*.—All acts and parts of acts, so far as they are inconsistent herewith, are hereby repealed.

§ 36. MUNICIPAL CORPORATIONS MAY PAY THEIR RAILROAD BONDS WITH RAILROAD STOCK AND BONDS; AND EXCHANGE RAILROAD STOCK FOR THEIR OWN BONDS. LAWS OF 1875, CHAPTER 421.

SECTION 1. *Town, city or village may exchange its bonds for railroad bonds or stocks; cancellation of bonds*.—It shall be lawful for any town, city or village to exchange the bonds and stock of any railroad corporation for and in payment of the bonds of any such town, city or village, heretofore issued in aid of any such railroad corporation, and it shall be lawful for any town, city or village to exchange the stock of any railroad corporation for the bonds of such corporation; and such exchange may be made by the officers of such town, city or village having the lawful charge and custody of such railroad stock and bonds, but the same shall not be thus exchanged for less than the par value thereof; and when any such exchange shall be made, report thereof shall be made, by the officers making the same, to the then next meeting of the board of auditors of their town, the common council of their city, or the board of trustees of their village; and the town, city or village bonds obtained by such exchange shall thereupon be canceled.

§ 37. PAYMENT OF MUNICIPAL AID BONDS. LAWS OF 1877,
CHAPTER 349.

SECTION 1. *Commissioners to report annually bonded indebtedness*—It shall be the duty of the commissioners appointed under the provisions of chapter 907, Laws, of 1869, entitled "An act to amend an act entitled 'An act to authorize the formation of railroad companies, and to regulate the same,' passed April 2, 1850, so as to permit municipal corporations to aid in the construction of railroads," and the acts amendatory thereof, to report annually the total amount of bonds issued under said chapter 907, Laws of 1869, and the acts amendatory thereof, by the town, city or village represented by such commissioners; the date and time when the principal of said bonds will become due, the rate and times of payment of interest thereon, the amount of such principal or interest paid, the amount of said principal or interest due and unpaid and to become due before the annual tax levy and collection of tax for the year next succeeding, and the amount in their hands applicable to the payment of the principal of said bonds or the interest thereon.

§ 2. *Form and execution of report; to be delivered to supervisors.*—Such report shall be in writing, signed by the said commissioners, or a majority of them, and there shall be affixed to said report an affidavit of at least one of the commissioners that such report is in all respects true and correct. The commissioners shall deliver said report to the board of supervisors of the county within three days after the commencement of the annual meeting of said board of supervisors.

§ 3. *Provisions for payment; moneys, to whom to be paid; bond of commissioners, renewal of.*—It shall be the duty of the board of supervisors, at the annual meeting when such report is received, to cause to be levied and raised by tax, on the taxable property of said town, city or village, the amount necessary to pay the principal and interest due and to become due at any time prior to the annual tax levy and collection of tax for the year then next succeeding, as shown by said report after deducting moneys on hand for the purpose. The amount to be levied and raised by tax, when so collected, shall be paid over to the said commissioners, to be by them applied to the purpose for which it was so collected. And all money now in the hands of the supervisor of any town, or officer of any city or village, applicable to the payment of the principal of said bonds, or interest thereon, shall be, on demand,

paid to such commissioners, and any money hereafter raised under the provisions of the act hereby amended, which by law is to be applied to the payment of said bonds, or interest thereon, shall in like manner, be paid to said commissioners. But before any money shall be so paid to such commissioners, they shall severally execute to the town, city or village, and deliver to the town clerks of towns, or the clerks of cities or villages, a bond with two or more sureties in double the amount of the money to be so received by them, as near as can be ascertained, conditioned for the proper and due disbursement of such money, and the proper accounting therefor, which bond shall be first approved by the supervisor, or the county judge, and by the mayor or president of cities or villages, and said bond shall be renewed annually.

§ 4. *Application of moneys received by commissioners ; cancellation of bonds ; commissioners to report to town auditors, etc., annually ; duplicate to be filed, etc. ; indorsement by town officers, etc. ; deposit of report and bonds ; acts not applicable to certain localities.*

—It shall be the duty of said commissioners to pay the principal and interest of said bonds at the maturity thereof, and on making such payments the bond or interest coupons paid shall be canceled by said commissioners by cutting out a portion of said bonds or coupons ; and a full record of all bonds and interest coupons paid and canceled shall be kept by said commissioners, which record shall be at all times open to the inspection of the supervisor, members of the board of town auditors, and justices of the peace of towns, or the members of common councils or trustees of cities or villages ; and said commissioners shall report in writing to the board of town auditors of towns, at their annual meeting, and to the common council or trustees of cities or villages, on the first day of April of each year, the date, number and amount of all bonds and interest coupons paid by them and canceled during the past year, and since their last report, and shall, at the same time, produce and deliver to the said town auditors, common council or trustees, the bonds and interest coupons canceled by them, taking a receipt therefor, which shall set forth the date, number and amount of each bond or coupon. Said commissioners, at the time of making such report, shall also file with the town clerk of towns, and clerk of cities and villages, a duplicate thereof. The said town auditors and the common council or trustees, as the case may be, shall indorse upon the report so received from the commissioners, that the bonds and interest coupons mentioned therein,

duly canceled, were received by them from the commissioners, if such is the case, and if all or any of them are not so received, so state in the indorsement. They shall then deposit said canceled bonds and coupons with said report, in the office of the clerk of the county for safe-keeping. Nothing in this act contained shall in any manner apply to or affect the town of Orleans, in the county of Jefferson, or any officer thereof, or any money raised by tax on the property therein, or to any bonds except such as were given under the act mentioned in the foregoing title.

§ 5. *Limitation.*—The provisions of this act shall not apply to the counties of Oswego, Madison, Erie, Orleans, Niagara and Genesee.

§ 37a. PROVISIONS RELATING TO RAILROAD STOCKS AND BONDS
HELD BY MUNICIPAL CORPORATIONS—LAWS OF 1892, CHAPTER
685, SECTIONS 12–20.

§ 12. *Municipal taxes of railroads payable to county treasurer.*—If a town, village or city has outstanding unpaid bonds, issued, or substituted for bonds issued, to aid in the construction of a railroad therein, so much of all taxes as shall be necessary to take up such bonds, except school district and highway taxes, collected on the assessed valuation of such railroad in such municipal corporation, shall be paid over to the treasurer of the county in which the municipal corporation is located. Such treasurer shall purchase with such moneys of any town, village or city, such bonds when they can be purchased at or below par, and shall immediately cancel them in the presence of the county judge. If such bonds cannot be purchased at or below par, such treasurer shall invest such money in the bonds of the United States, of the State of New York, or of any town or village or city of such State, issued pursuant to law; and shall hold such bonds as a sinking fund for the redemption and payment of such outstanding railroad aid bonds. If a county treasurer shall unreasonably neglect to comply with this section, any taxpayer of the town, village or city, having so issued its bonds may apply to the county judge of the county in which such municipal corporation is situated, for an order compelling such treasurer to execute the provisions of this section. The county treasurer of any county in which one or more towns therein shall have issued bonds for railroad purposes, shall, when directed by the board of supervisors or county judge of the county, execute and file in the office of the county clerk an undertaking, with not less than two sureties, approved by such board or judge, to the effect that he will faithfully perform his duties pursuant to this section. The annual report of a county treasurer shall fully state, under the head of "railroad sinking fund," the name and character of all such investments made by him or his predecessors, and the condition of such fund. (*As amended, L. 1893, ch. 466.*)

§ 13. *Abolition of office of railroad commissioners.*—The board of supervisors of any county may, upon the application of the auditing board of any municipal corporation therein, by resolution, abolish the office of railroad commissioners of such municipal corporation, and direct the manner of the transfer of their

duties to the supervisor of the town, or the treasurer of the municipal corporation other than a town, and upon his compliance with such directions, such transferee shall be vested with all the powers conferred upon such railroad commissioners and subject to all the duties imposed upon them.

§ 14. *Appointment of railroad commissioners.*—The county judge of any county within which is a municipal corporation having or being entitled to have railroad commissioners, when this chapter shall take effect, and in which the duties imposed upon such commissioners are not fully performed, shall continue to appoint and commission, upon the application of twenty freeholders within such corporation, three persons, who shall be freeholders and resident taxpayers therein, commissioners for the purpose of performing the duties and completing the business required of them pursuant to this chapter or any law. Such commissioners shall hold their office for five years, and until others are appointed by the county judge, unless their duties shall be sooner performed, or the office shall be abolished, who shall also, in like manner, fill any vacancies that may exist therein. Such commissioners shall each receive the sum of three dollars per day for each day actually engaged in the discharge of their duties, and the necessary disbursements to be audited and paid by the usual auditing and disbursing officers of such municipal corporation. A majority of such commissioners, at a meeting of which all have notice, shall constitute a quorum.

§ 15. *Oath and undertaking of commissioners.*—Before entering upon their duties such commissioners shall take the constitutional oath of office, and make and file with the county clerk of their county, their joint and several undertaking, with two or more sureties to be approved by the county judge of their county, to the effect that they will faithfully discharge their duties as such commissioners, and truly keep, pay over and account for all moneys belonging to such corporation coming into their hands.

§ 16. *Exchange or sale of railroad stock and bonds.*—The commissioners or officers of a municipal corporation, having the lawful charge and control of any railroad stock or bonds, for or in payment of which the bonds of such municipal corporation have been lawfully issued in aid of such railroad corporation, may exchange the stock or bonds of such railroad corporation for and in payment of such bonds, or the new substituted bonds of such municipal corporation, when such exchange can be made for, not less

than the par value of the stocks or bonds so held by them. If they cannot make such exchange they may sell such stock or bonds at not less than par; but they may, on the application and with the approval, of the governing board of the municipal corporation, owning such stock and bonds, exchange, sell or dispose of such stock or bonds, at the best price and upon the best terms obtainable, for the municipal corporation they represent, and shall execute to the purchaser the necessary transfers therefor. All moneys received for any stock or bonds shall only be applied to the payment and extinguishment of the bonds of the municipal corporation, lawfully issued in aid of any such railroad, or substituted therefor; except that if the bonds so issued or substituted have all been paid, or the moneys so realized shall be more than sufficient to pay them in full, and all the costs and expenses of the sale, such proceeds or balance thereof shall be paid by the officers making the sale, to the supervisor of the town, or the treasurer of the municipal corporation, and applied to such lawful uses as the governing board of the municipal corporation, entitled to the same, may direct.

The provisions of this section shall apply to all such commissioners or officers of a municipal corporation elected or appointed or acting under the provisions of any special act, and the authority hereby conferred shall not be limited by the provisions of any such special act. (*As amended, L. 1893, chap. 490.*)

§ 17. *Annual report of commissioners and payment of bonds.*—The commissioners of a municipal corporation, having in charge the moneys received and collected, and who are responsible for the payment of the interest of the bonds lawfully issued by such municipal corporation, in aid of railroads, shall annually report to the governing board of the municipal corporation, the total amount of the municipal indebtedness of the municipal corporation they represent, upon such bonds or such new bonds substituted therefor, the date of the bonds and when payable, the rate of interest thereon, the acts under which they were issued, the amount of principal and interest that will become due thereon before the next annual tax levy and collection of taxes for the next succeeding year, and the amount in their hands applicable to the payment of the principal or interest thereon. Each year such governing board shall levy and collect of the municipal corporation sufficient money to pay such principal and interest, as the same shall become due and payable.

When collected, such moneys, with the unpaid sums on hand, shall be forthwith paid over to such commissioners, and applied by them to the purposes for which collected or held. When paid, such bonds shall be presented by such commissioners to the governing board of the municipal corporation, at least five days before the annual town-meeting, village or city election, or meeting of the board of supervisors, next thereafter held, who shall cancel the same, and make and file a record thereof in the clerk's office of the municipal corporation, whose bonds were so paid or canceled. (*As amended, L. 1893, ch. 466.*)

§ 18. *Accounts and loans by commissioners.*—Such commissioners shall present to the auditing board of the municipal corporation they represent, at each annual meeting of such board, a written statement or report, showing all their receipts and expenditures, with vouchers. They shall also loan on proper security or collaterals, or deposit in some solvent bank, or banking institutions, at the best rate of interest they can obtain, or invest in the bonds of the municipal corporation they represent, or in bonds of the state, or of any town, village, city or county therein, issued pursuant to law, or in the bonds of the United States, all moneys that shall come into their hands by virtue of their office, and not needed for current liabilities; and all earnings, profits or interest accruing from such loans, deposits or investments, shall be credited to the municipal corporation they represent, and accounted for in their annual settlement with the governing board thereof.

§ 19. *Reissue of lost or destroyed bonds.*—When any bonds lawfully issued by a municipal corporation in aid of any railroad, or in substitution for bonds so issued, shall be lost or destroyed, such commissioners may issue new bonds in the place of the ones so lost or destroyed, at the same rate of interest, and to become payable at the same time, upon the owner furnishing satisfactory proof, by affidavit, of such ownership, and loss or destruction, and a written indemnity, with at least two sureties, approved as to form and sufficiency by the county judge of the county in which such municipal corporation is situated. Every new bond so issued shall state upon its face the number and denomination of the bond for which it is issued, that it is issued in the place of such bond claimed to have been lost or destroyed, that it is issued

* So in the original.

as a duplicate thereof, and that but one is to be paid. Such affidavit and indemnity, duly indorsed, shall be immediately filed in the county clerk's office.

§ 20. *Payment of judgments against municipal corporation.*—When a final judgment for a sum of money shall be recovered against a municipal corporation, and the execution thereof shall not be stayed pursuant to law, or the time for such stay shall have expired, the treasurer or other financial officer of such corporation having sufficient moneys in his hands belonging to the corporation not otherwise specially appropriated, shall pay such judgment upon the production of a certified copy of the docket thereof.

CHAPTER IX.

PROVISIONS RELATING TO BONDS, CONTRACTS, PAYMENT OF WAGES AND FARES.

- SECTION 38. Conversion of bonds into stock in certain cases where tracks are relaid.
- 39. Railroad bonds; how made non-negotiable by indorsement.
 - 40. Change of grade of railroads, and provision for increase of floating and bonded indebtedness.
 - 41. Railroad mortgages of real and personal property need not be filed as chattel mortgages.
 - 42. Contracts for conditional sale of personal property on credit to be filed.
 - 43. The same not applicable to contracts which have been or must be recorded.
 - 44. Contracts for lease or conditional sale of equipment and rolling stock to be filed.
 - 45. Railroad companies must pay employees in cash.
 - 46. Employees of certain railroads to be paid weekly.
 - 47. Payment of fares upon railroads.

§ 38. CONVERSION OF BONDS INTO STOCK IN CERTAIN CASES WHERE TRACKS ARE RELAID. LAWS OF 1849, CHAPTER 271, SECTION 1.

All railroad companies in the State of New York whose roads have been or now are laid with the flat bar rail, and that have borrowed or that may hereafter borrow money on bonds of the said companies for relaying said road with the heavy iron rail, weighing not less than fifty-six pounds to the lineal yard, and pay all or any part of said bonds out of the earnings of said roads, may for such part of said bonds as the companies do pay as aforesaid, convert the same into stock and divide the same ratably among the stockholders; or the directors may dispose of said stock at auction to the highest bidder and divide the amount for which it sells among the stockholders in proportion to the stock respectively held by them.

§ 39. RAILROAD BONDS, HOW MADE NON-NEGOTIABLE BY INDORSEMENT. LAWS OF 1871, CHAPTER 84, SECTION 1.

- It shall be lawful for any person or persons owning and holding any railroad mortgage bonds, or other corporate bonds (for which

a registry is not by law provided), heretofore issued, or which may be hereafter issued, and made payable in this State and which are made payable to bearer, to render the same non-negotiable by the owner and holder indorsing upon the same and subscribing a statement that said bond is the property of such owner. And thereupon the principal sum of money mentioned in said bond shall only be payable to such owner* or his legal representatives or assigns.

THE SAME; INDORSEMENT. LAWS OF 1873, CHAPTER 595, SECTIONS 1-4.

The owner or holder of any corporate or municipal bond or obligation (except such as are designed to circulate as currency), payable to bearer, heretofore issued or which may hereafter be issued, and payable in this State, but not registered in pursuance to any law thereof, may make the same non-negotiable (except as provided in the second section of this act), by subscribing his name to a statement indorsed thereon, that such bond or obligation is his property, and thereupon the principal sum therein mentioned shall be payable only to such owner or holder or his legal representatives or assigns.¹

The bond and obligations mentioned in the last section, after having been indorsed as therein provided, may be transferred by an endorsement in blank, or payable to bearer, or to order, with the addition of the assignor's place of residence.

The provisions of this act shall apply to all interest coupons • accompanying any corporate or municipal bond or obligation payable in this State.

• So much of chapter eighty-four of the Laws of one thousand eight hundred and seventy-one, entitled "An act to authorize the owners and holders of certain railroad mortgage bonds, made payable to bearer, to render the same payable to order only," as is inconsistent with this act is hereby repealed. (See preceding section.)

RAILROAD BONDS MAY BE TRANSFERRED BY INDORSEMENT IN BLANK. LAWS OF 1871, CHAPTER 84, SECTION 2.

The bonds described and referred to in the first section of this act* may be transferred by an indorsement in blank, giving name and residence of assignor, or they may be transferred by an in-

5 Civ. Pro. R. (Browne) 125; 66 How. Pr. 437 32 Hun, 167.

dorsement payable to bearer or to the order of the purchaser (naming him), subscribed by the assignor, giving name and place of residence.¹

§ 40. CHANGE OF GRADE OF RAILROADS, AND PROVISION FOR INCREASE OF FLOATING AND BONDED INDEBTEDNESS. LAWS OF 1891, CHAP. 267, SEC. 1.

Any railroad company incorporated under chapter one hundred and forty of the laws of eighteen hundred and fifty, entitled "An act to authorize the formation of railroad corporations and to regulate the same," and acts amendatory thereof and supplementary thereto, may change the gauge of its road on consent of the board of railroad commissioners and approval of the stockholders of said railroad company owning three-fourths in amount of the capital stock, said approval of said stockholders to be made at a special meeting of the stockholders of said company called for that purpose; and upon like consent of said board of railroad commissioners, and upon like approval of the stockholders of said railroad company owning three-fourths in amount of the said capital stock of said company, the floating and bonded indebtedness of said railroad company may be increased to an amount necessary to make such change of gauge and to provide for the operating expenses of said railroad, notwithstanding restrictions or limitations contained in the original certificate of incorporation of said railroad company.

§ 41. RAILROAD MORTGAGES OF REAL OR PERSONAL PROPERTY NEED NOT BE FILED AS CHATTEL MORTGAGES. LAWS OF 1868, CHAP. 779.

It shall not be necessary to file as a chattel mortgage, any mortgage which has been, or shall hereafter be, executed by any railroad company upon real and personal property, and which has been, or shall be recorded as a mortgage of real estate in each county in or through which the railroad runs.²

§ 42. CONTRACTS FOR CONDITIONAL SALE OF PERSONAL PROPERTY ON CREDIT TO BE FILED. LAWS OF 1884, CHAP. 315, SECTION 2, AS AMENDED BY LAWS OF 1885, CHAP. 488, SECTION 1.

§ 2. *Instruments, where to be filed.* The instruments mentioned

¹ 10 Bosw., 332.

² 32 Hun, 167; 54 N. Y., 314; 35 Barb., 484; 31 id., 590; 94 N. Y., 160; 51 Barb., 45; 47 id., 104.

in the preceding section shall be filed in the several towns and cities in this State, where the person to whom such property is so contracted to be sold, if a resident of this state, shall reside at the time of the execution thereof; and if not a resident, then in the city or town where the property so contracted to be sold shall be at the time of the execution of such instrument. In the city of New York such instrument shall be filed in the office of the register of the city, and in the county of Kings in the office of the register of said county. In the several cities of this states other than the cities and New York and Brooklyn, and in the several towns of this state in which a county clerk's office is kept, in such office; and in each of the other towns in this state, in the office of the town clerk thereof. If the conditional vendee be a railroad corporation, the instrument mentioned in the preceding section shall be filed in the office of the clerk of each county through which its railroad is located, or, in counties where there is a register, in the office of the register, and such filing shall be deemed sufficient for all the purposes of this act. Such registers and clerks are hereby required to file all such instruments aforesaid, presented to them respectively for that purpose, and to indorse thereon the time of receiving the same, and shall deposit the same in their respective offices, to be kept there for the inspection of all persons interested.

§ 43. THE SAME. NOT APPLICABLE TO CONTRACTS WHICH HAVE BEEN OR MUST BE RECORDED. LAWS OF 1884, CHAP. 315, SECTION 7, AS AMENDED BY LAWS OF 1886, CHAP. 495, AND BY LAWS OF 1888, CHAP. 225, SECTION 1.

* * * This act shall not apply to railroad equipment or rolling-stock sold, leased or loaned, under a contract which has been or must be recorded pursuant to the provisions of chapter three hundred and eighty-three of the Laws of eighteen hundred and eighty-three, entitled "An act relating to certain contracts for the lease or conditional sale of railroad equipment and rolling stock, and providing for the record thereof."

§ 44. CONTRACTS FOR LEASE OR CONDITIONAL SALE OF EQUIPMENT AND ROLLING STOCK TO BE FILED. LAWS OF 1883, CHAP. 383.

SECTION 1. *Conditional sale, lease or loan of equipment and rolling stock to be invalid as to judgment creditors and purchasers, with-*

out notice, unless evidenced in writing and recorded. Whenever any railroad equipment and rolling stock shall hereafter be sold, leased or loaned on the condition that the title to the same, notwithstanding the possession and use of the same by the vendee, lessee or bailee, shall remain in the vendor, lessor or bailor until the terms of the contract as to as to the payment of the installments, amounts or rentals payable, or the performance of other obligations thereunder shall have been fully complied with, but, also providing, that title thereto shall pass to the vendee, lessee or bailee on full payment therefor as aforeaid, such contracts shall be invalid as to any subsequent judgment creditor or any subsequent purchaser for a valuable consideration without notice, unless

1. The same shall be evidenced by writing, duly acknowledged before some person authorized by law to take acknowledgments of deeds.

2. Such writing shall be recorded in the same book as mortgages are recorded, in the office of the clerk of the county in which is located the principal office or place of business of such vendee, lessee or bailee within the state, or in the office of the register's office.

3. *Name of vendor, etc., to be on locomotive or car, etc.* Each locomotive or car so sold, leased or loaned shall have the name of the vendor, lessor or bailor, or the assignee of such vendor, lessor or bailor plainly marked upon both sides thereof, followed by the word owner, lessor, bailor or assignee, as the case may be.

§ 2. *Not to invalidate any contract heretofore made if recorded within ninety days.* This act shall not be held to apply to or invalidate any contract heretofore made of the character described in the first section, but the same shall be and remain valid if recorded within ninety days from the date thereof.

§ 45. RAILROAD COMPANIES MUST PAY EMPLOYEES IN CASH. LAWS 1889, CHAP. 381.

SECTION 1. *Wages payable only in cash.* Every manufacturing, mining or quarrying, mercantile, railroad, street railway, canal, steamboat, telegraph and telephone corporation, and every incorporated express company, and water company not municipal shall pay to each and every employee engaged in its business the wages earned by such employee in cash; and it shall not be lawful for any of the above-named companies or corporations to pay their

employees in their own scrip or that of others commonly known as store money orders.

§ 2. *Penalty for violation of act.* Any corporation violating any of the provisions of this act shall be punished by a fine not exceeding fifty, and not less than ten dollars, on each complaint on which it is convicted, provided complaint for such violation is made within thirty days from the date thereof.

§ 46. EMPLOYEES OF CERTAIN RAILROADS TO BE PAID WEEKLY. LAWS OF 1890, CHAP. 388.

SECTION 1. *Weekly payment of wages required.*—Every manufacturing, mining or quarrying, lumbering, mercantile, railroad, surface, street, electric and elevated railway (except steam surface railroads), steamboat, telegraph, telephone and municipal corporation, and every incorporated express company and water company shall pay weekly, each and every employee, engaged in its business, the wages earned by such employe, to within six days of the date of such payment, provided, however, that if at any time of payment any employee shall be absent from his regular place of labor, he shall be entitled to said payment at any time thereafter upon demand.¹

§ 2. *Penalty for violation; penalties how recovered; assignment of wages when forbidden.*—Any corporation violating any of the provisions of this act shall be liable to a penalty not exceeding fifty dollars and not less than ten dollars for each violation, to be paid to the people of the state and which may be recovered in a civil action; provided an action for such violation is commenced within thirty days from the date thereof. The factory inspectors of this state, their assistants or deputies may bring an action in the name of the people of the state as plaintiff against any corporation which neglects to comply with the provisions of this act for a period of two weeks, after having been notified in writing by such inspectors, assistants or deputies, that such action will be brought. On the trial of such action, such corporation shall not be allowed to set up any defense for a failure to pay weekly any employe engaged in its business the wages earned by such employe to within six days of the date of such payment other than a valid assignment of such wages or a valid set-off against the same, or the absence of such employe from his regular place of labor at

¹ Peo. v. City of Buffalo, 57 Hun, 577.

the time of payment, or an actual tender to such employe at the time of payment of the wages so earned by him, or a breach of contract by such employe, or a denial of the employment. No assignment of future wages, payable weekly, under the provisions of this act shall be valid if made to the corporation from whom such wages are to become due, or to any person on behalf of such corporation, or if made or procured to be made to any person for the purpose of relieving such corporation from the obligation to pay weekly under the provisions of this act. Nor shall any of said corporations require any agreement from any employe to accept wages at other periods than as provided in section one of this act as a condition of employment.

§ 3. *Proceedings to enforce act.*—The provisions of section *two hundred and sixty-three, and three hundred and eighty-four of the Code of Civil Procedure shall apply to and govern any proceedings brought to enforce the provisions of this act, and it is hereby made the duty of the attorney-general of this state to appear in behalf of such proceedings brought hereunder by the factory inspectors of this state, their assistants or deputies.

§ 4. This act shall take effect on the first day of July, eighteen hundred and ninety.

§ 47. PAYMENTS OF FARES UPON RAILROADS. LAWS OF 1889, CHAP. 38, SEC. 1.

Extra fare may be exacted when no ticket is purchased; rebate ticket to be issuee therefor.—It shall be lawful for any company owning or operating a steam railroad in this State, to demand and collect an excess charge of ten cents over the regular or established rate of fare, from any passenger who pays fare in the car in which he or she may have taken passage, except where such passage is wholly within the limits of any incorporated city in this State, provided, however, that it shall be the duty of such company to give to any passenger paying such excess, a receipt or other evidence of such payment, and which shall legibly state that it entitles the holder thereof to have such excess charge refunded, upon the delivery of the same at any ticket office of said company, upon the line of their railroad, and said company shall refund the same upon demand; and provided further that this act shall not

* So in the original.

apply to any passenger taking passage from a station or stopping place when tickets cannot be purchased during half an hour previous to the schedule time for the departure of said train on which such passenger takes passage.

CHAPTER X.

RAILWAY APPLIANCES.

SECTION 48. Railroad commissioners may compel the lighting and ventilation of tunnels.

49. Automatic car couplers regulated.

50. Prevention of fires in forest lands.

51. Lights on swing bridges across the Hudson river.

§ 48. RAILROAD COMMISSIONERS MAY COMPEL THE LIGHTING AND VENTILATION OF TUNNELS. LAWS OF 1891, CHAPTER 360.

SECTION 1. The board of railroad commissioners of the State of New York are hereby authorized, empowered and given full and complete authority to require and compel all tunnels used or to be used by railways operated by steam in this State to be properly ventilated, in such manner and by such means and mechanical appliances as said board of railroad commissioners, or a majority of the same, may direct.

§ 2. The board of railroad commissioners of this State are also hereby authorized, empowered and given full and complete authority to require and compel all tunnels used, or to be used by railroads operated by steam in this State, to be properly lighted by electricity or otherwise, or by such means or in such manner as said board of railroad commissioners, or a majority of the same, may direct.

§ 3. Whenever said board of railroad commissioners of this State, or a majority thereof, shall cause to be personally served upon any railroad corporation controlling any tunnel, or part of a tunnel, in this State for the purpose of operating a railroad or moving, hauling or propelling cars therein by steam by delivering a copy personally to the president, general manager or any director of said corporation of a notice or order, signed by a majority of said board of railroad commissioners, stating and specifying the structures to be erected, the manner, means, mechanical appliance and apparatus to be used in lighting or ventilating any tunnel or tunnels used by said corporation for the purpose of moving, hauling or propelling cars by steam therein as aforesaid, said cor-

poration shall, within thirty days from and after the service of said notice or order as aforesaid, cause said tunnel or tunnels so used by it as aforesaid to be lighted or ventilated, or both, in the manner and by the means and use of the mechanical apparatus and appliances specified and pointed out in said notice or order.

§ 4. After the expiration of thirty days from the service of said order or notice specified in the preceding section, as therein directed, if said corporation shall not have fully complied with the provisions and requirements of said notice or order as aforesaid, and as therein directed and required, said board of railroad commissioners, or a majority of said board, may apply to the supreme court of this State for a writ of mandamus to compel said corporation or corporations so neglecting or refusing to obey and comply with the provisions of said order or notice to comply with and obey the provisions and requirements of said notice or order, and said court shall have full power and authority to hear and determine said matter, and, after giving the corporation or corporations proceeded against an opportunity to be heard in its or their defense, to compel said corporation or corporations so proceeded against to obey said order or notice, and forthwith comply with and carry out the provisions and requirements therein contained.

§ 5. Every corporation violating any of the provisions of this act shall be guilty of a misdemeanor, and may be indicted therefor, and may be compelled to appear and plead to an indictment therefor in the person of its president, secretary, treasurer or any director thereof, and a bench warrant may issue out of any competent court to compel such attendance and pleading, and, upon conviction thereof, punished by a fine of one thousand dollars, and an additional fine of five hundred dollars a day for each and every day or part of a day after thirty days from the due service of said notice or order that said corporation shall refuse or neglect to obey and carry out the requirements and provisions of the same, and duly sentenced to pay the same.

§ 6. It shall be the duty of the district attorney prosecuting any corporation for a violation of any of the provisions of this act, that shall be convicted thereof and sentenced to pay a fine therefor, to cause a judgment-roll to be made up, consisting of the indictment orders and sentence of the court and a formal judgment, to be prepared by him, which judgment shall be duly signed by the clerk of the county in which said trial took place; said judgment-roll shall be filed by said county clerk and said judgment

shall be duly recorded in the book of judgments in said county and duly entered and docketed by said county clerk in said county the same as if said judgment had been obtained in a civil action, and said judgment so duly entered and docketed shall become and be a lien upon all of the real estate of said corporation against which the same is obtained, and the collection thereof may be enforced by execution to be issued and signed by the district attorney of the county where the trial of said indictment took place, in the same manner and to the same extent as executions are collected in civil action.

§ 7. In cities of this state having a population of one million inhabitants or over, where tunnels are or may hereafter be operated or controlled by any railroad corporation such portions of any mechanical or other devices or appliances as may be required under the provisions of this act to be constructed on or above the surface of any streets, avenues or other places under which such tunnels may be built, shall be subject as to form, material and construction, to the approval of the local authorities of such cities, except that in the city of New York such approval shall be by a majority vote of the mayor, the comptroller, the commissioner of public works and the president of the department of public parks of said city.

§ 49. AUTOMATIC CAR COUPLERS REGULATED. LAWS OF 1889, CHAPTER 524.

SECTION 1. *Use of automatic couplers on freight cars regulated.*—All persons and corporations operating any line or lines of railway by steam power in this State shall, after the first day of November, 1892, equip all of its own engines and freight cars run and used in freight trains, or other trains in this State, with such automatic self couplers; and it shall be unlawful after that date, to run or operate in this State any freight cars belonging to such persons or corporations without having the same equipped with the appliances above mentioned. Provided, that it shall be lawful in case of accident, or other emergency, to temporarily dispense with the use of such appliances.

§ 2. *Railroad commissioners may extend time.*—In special cases the Railroad Commissioners of this State may extend the time for compliance with this act for a period not exceeding one year.

§ 3. *Failure to comply with act; how punished.*—Any person or corporation operating a line of railway by steam power in this

State who shall fail or neglect to comply with the provisions of this act shall be guilty of a misdemeanor, and, on conviction, shall be punished by a fine of \$500 for each offense. Provided, that employees shall not be deemed guilty or subject to punishment under this act.

§ 50. PREVENTION OF FIRES IN FOREST LANDS. LAWS OF 1885, CHAPTER 283.

§ 25. *Railroad companies to burn all inflammable material.*—Every railroad company whose road passes through waste or forest lands, or lands liable to be overrun by fires within the State, shall twice in each year cut and burn off or remove from its right of way all grass, brush or other inflammable material, but under proper care, and at times when the fires thus set are not liable to spread beyond control.

§ 26. *Locomotives to be provided with arrangement for preventing escape of fire from engine.*—All locomotives which shall be run through forest lands shall be provided, within one year from the date of this act, with approved and sufficient arrangements for preventing the escape of fire from their furnaces or ash-pan, and netting of steel or iron wire upon their smoke-stack to check the escape of sparks of fire. It shall be the duty of every engineer and fireman employed upon a locomotive to see that the appliances for the prevention of the escape of fire are in use and applied, as far as it can be reasonably and possibly done.

§ 27. No railroad company shall permit its employees to deposit fire-coals or ashes upon their track in the immediate vicinity of woodlands or lands liable to be overrun by fires, and in all cases where any engineers, conductors or trainmen discover that fences along the right of way, on woodlands adjacent to the railroad, are burning, or in danger of fire, it shall be their duty to report the same at their next stopping place, and the person in charge of such station shall take prompt measure for extinguishing such fires.

§ 28. *Companies to provide men to extinguish fires.*—In seasons of drought, and especially during the first dry time in the spring after the snows have gone and before vegetation has revived, railroad companies shall employ a sufficient additional number of trackmen for the prompt extinguishment of fires. And where a forest fire is raging near the line of their road they shall concen-

trate such help and adopt such measures as shall most effectually arrest their progress.

§ 29. Any railroad company violating the provisions or requirements of this act shall be liable to a fine of \$100 for each offense.

§ 51. LIGHTS ON SWING BRIDGES ACROSS THE HUDSON RIVER.
LAWS OF 1880, CHAPTER 541.

SECTION 1. Every individual association of individuals, company or corporation, owning, maintaining or operating a swing bridge across the Hudson river, shall, during the season of navigation, between sundown and sunrise, keep and maintain the following lights: Upon every such swing bridge with water way on each side of pivot pier, eight lights, located as follows: On the east rest pier, on or over the north end, one red light; on or over the south end, one red light; on the west rest pier, on or over the north end, one red light*; on or over the south end, one red light; and when open, a green light on each corner of said swing bridge. Upon every such swing bridge with water way on but one side of pivot pier, five lights, located as follows: On the rest pier nearest the channel, on or over the north end, one red light; on or over the south end, one red light; and when such swing bridge is open, a green light at each end thereof upon the corners nearest the channels, said lights to be of the usual brilliancy of lights used for such purposes, known as signal lanterns.

§ 2. Every person, association, company or corporation who shall violate the foregoing provisions shall, for every such offense, be deemed guilty of a misdemeanor, and upon conviction therefor be punished by a fine not exceeding the sum of one hundred dollars.

* So in original.

PART SECOND.

CHAPTER I.

LOCATION OF TRACKS; TITLE TO CERTAIN LANDS; CANAL, ELECTRIC LIGHT AND PLANK-ROAD COM- PANIES MAY LAY TRACKS.

SECTION 52. Streets and highways may be laid across railroads; duty of corporation; penalty.

53. When commissioners may consent to construction of railroad across public highways; duty of corporation.

54. Sales and exchanges of forest lands.

55. Title to salt lands; how acquired.

56. Title of the United States to certain lands not affected by railroad privileges.

57. Maps to be filed where railroads constructed near or across canals.

58. Corporations owning canals may construct and operate railroads.

59. Electric light and power companies may construct and operate railroads.

60. Plank-road and turnpike companies authorized to lay down rails.

§ 52. STREETS AND HIGHWAYS MAY BE LAID ACROSS RAIL- ROADS; DUTY OF CORPORATION; PENALTY; LAWS OF 1853, CHAPTER 62.

SECTION 1. It shall be lawful for the authorities of any city, village or town in this state, who are by law empowered to lay out streets and highways, to lay out any street or highway across the track of any railroad now laid or which may hereafter be laid, without compensation to the corporation owning such railroad; but no such street or highway shall be actually open for use until thirty days after notice of such laying out has been served personally upon the president, vice-president, treasurer or a director of such corporation.

§ 2. It shall be the duty of any railroad corporation, across whose track a street or highway shall be laid out as aforesaid, immediately after the service of said notice, to cause the said street or highway to be taken across their track, as shall be most convenient and useful for public travel, and to cause all necessary embankments, excavations and other work to be done on their

road for that purpose; and all the provisions of the act, passed April second, eighteen hundred and fifty, in relation to crossing streets and highways, already laid out, by railroads, and in relation to cattle guards and other securities and facilities for crossing such roads, shall apply to streets and highways hereafter laid out.¹

§ 3. If any railroad corporation shall neglect or refuse, for thirty days after the service of the notice aforesaid, to cause the necessary work to be done and completed, and improvements made on such streets or highways across their road, they shall forfeit and pay the sum of twenty dollars for every subsequent day's neglect or refusal, to be recovered by the officers laying out such street or highway, to be expended on the same; but the time for doing said work may be extended, not to exceed thirty days, by the county judge of the county in which such street or highway, or any part thereof, may be situated, if, in his opinion, the said work cannot be performed within the time limited by this act.²

§ 53. WHEN COMMISSIONERS MAY CONSENT TO CONSTRUCTION OF RAILROAD ACROSS PUBLIC HIGHWAY; DUTY OF CORPORATION, LAWS OF 1835, CHAPTER 300.

SECTION 1. Whenever any association or individual shall construct a railroad upon land purchased for that purpose, on a route which shall cross any road or other public highway, it shall be lawful for the commissioners of highways, having the supervision thereof, to give a written consent that such railroad may be constructed across or on such road or other public highway; and thereafter such association or individual shall be authorized to construct and use a railroad across, or on such road or other highways as the commissioners aforesaid shall have permitted; but any public highway thus intersected or crossed by a railroad, shall be so restored to its former state as not to have impaired its usefulness.³

§ 54. SALES AND EXCHANGES OF FOREST LANDS; LAWS OF 1885, CHAPTER 283.

SECTION 8. *Forest lands not to be leased or taken.*—The lands now or hereafter constituting the forest preserve shall be forever kept as wild forest lands, and shall not be sold nor shall they be leased

¹ *Quare.* If section 2 of this act is not wholly or partly repealed by Laws of 1890, chapter 565, section 180.

² 21 Barb., 513; 24 N. Y., 345; 76 id., 594; 91 id., 552; 90 id., 21, 24.

³ 14 N. Y., 520; 20 W. Dig., 478; 40 Hun, 313.

or taken by any person or corporation, public or private, except that whenever any of the lands now constituting the forest preserve, or which may thereafter become a part thereof, owned by the state within any county specified in section seven of the act hereby amended, shall consist of separate small parcels or tracts wholly detached from the main portions of the forest preserve and bounded on every side by lands not owned by the state, then it shall be lawful, and the comptroller shall have power to sell and convey such separate tracts or parcels, or the timber thereon, to such person or persons, corporation or association as shall have offered the highest price therefor; but no such tract or parcels of land, or the timber thereon, shall be sold by the comptroller except upon the recommendation of the forest commission or a majority thereof, together with the advice of the attorney-general on behalf of the State. Such separate tracts or parcels of land may be exchanged by the comptroller for lands that lie adjoining the main tracks of the forest preserve upon the recommendation of the forest commission or a majority thereof, together with the advice of the attorney-general on behalf of the state; but the values of said lands so exchanged must be first appraised by three disinterested appraisers sworn to faithfully and fairly appraise the value of said lands, and the difference, if any, between the values of such parcels so proposed to be exchanged shall be paid by the party so exchanging with the State into the State treasury, but the State shall not pay the amount of any such difference. Two of said appraisers shall be nominated and appointed by the county judge of the county in which said lands proposed to be exchanged are situate, or in case such lands are situate in two counties, then the county judge of each county shall nominate and appoint each one appraiser. The two appraisers so appointed shall select a third appraiser, and they shall report to the comptroller the result of said appraisal before such lands shall be exchanged as aforesaid. The said appraisers so appointed shall receive the same compensation for their services as is provided for appraisers of decedents' estates, to be paid by the party so proposing to exchange lands with the State. It shall be the duty of the comptroller annually to report to the legislature all sales or exchanges of lands made under the provisions of this act, together with all bids and the amounts received therefor, and in said report shall be included the reports of appraisers of lands exchanged in accordance with the foregoing provisions. The proceeds of all land so sold, or the

receipts from all exchanges so made, shall be invested by the comptroller, with the approval of the forest commission, in the purchase of forest land adjoining great blocks of the forest preserve now owned by the state. (Thus amended, Laws of 1887, chap. 475.)

§ 55. TITLE TO SALT LANDS; HOW ACQUIRED; LAWS OF 1848, CHAPTER 346.

SECTION 7.—Whenever it shall be necessary for any railroad company to occupy any of the salt lands belonging to this state for the use of their road, the same shall be appraised in the manner provided for in the second section of this act, and when they shall pay into the treasury of this state, the said appraised value, they shall become possessed of the same to the same extent as by their charter they are authorized to become possessed of land belonging to individuals.¹

§ 56. TITLE OF THE UNITED STATES TO CERTAIN LANDS, NOT AFFECTED BY RAILROAD PRIVILEGES. LAWS OF 1870, CHAPTER 70.

SECTION 1.—Any right, title or privilege heretofore granted, or which may be granted by the United (*sic*) authorities to any railroad company to cross or occupy any portion of the fortification grounds in the city of Oswego, for road tracks or any railroad purpose connected therewith, shall not impair or invalidate any of the rights, titles or privileges given to the United States by an act entitled "An act to cede the jurisdiction of certain lands near the mouth of the Oswego river, New York, to the United States," passed April 25, 1839.

§ 57. MAPS TO BE FILED WHEN RAILROADS CONSTRUCTED NEAR OR ACROSS CANAL. LAWS OF 1834, CHAPTER 276.

SECTION 17.—The canal commissioners are hereby invested with a general and supervisory power over so much of any railroad as passes over any canal or feeder belonging to this state, or approaches within ten rods of such canal or feeder, so far as such power may be necessary to preserve the free and perfect use of the canals or feeders of this state, and necessary for making any repairs, improvements or alterations in the same; and said com-

¹ 7 Barb., 599; 6 N. Y., 74.

pany shall not construct their railroad over or at any place within ten rods of any canal or feeder belonging to this State, unless said company shall lay before the commissioners aforesaid, a map, plan and profile, as well of the canal or feeder as of the route designated for their railroad, exhibiting distinctly and accurately the relations of each to the other, at all the places within the limits of ten rods as aforesaid; and shall thereupon obtain the written permission of said canal commissioners, with such conditions, instructions and limitations as, in the judgment of said canal commissioners, the free and perfect use of any such canal or feeder may require.

§ 58. CORPORATIONS OWNING CANALS MAY CONSTRUCT AND OPERATE RAILROADS. LAWS OF 1881, CHAPTER 452.

SECTION 1.—It shall be lawful for any corporation of this State owning and operating a canal to construct and operate along or in lieu of such canal a railroad, and the exercise of the authority hereby conferred shall not be deemed to forfeit or impair its corporate rights under its charter or act of incorporation.

§ 2. Such company in the construction and maintenance of any such railroad under the authority of this act shall have, possess and enjoy all the powers and privileges contained in an act entitled "An act to authorize the formation of railroad corporations and to regulate the same," passed April second, eighteen hundred and fifty, and the several acts amending the same, and be subject to all the duties, liabilities and provisions so far as relates to any powers or privileges by this act upon said company conferred and hereafter exercised.¹

§ 3. Nothing in this act contained shall authorize the construction of any railroad except upon or along such canal owned and operated by any such company, and not in any other locality.

§ 59. ELECTRIC LIGHT AND POWER COMPANIES MAY CONSTRUCT AND OPERATE RAILROADS. LAWS OF 1890, CHAPTER 416.

SECTION 1. All stockholders of any domestic electric light and power company incorporated under a general law, and having at least five stockholders, and actually carrying on business in this state, may execute and file in the offices in which the original cer-

¹ *Quære*.—In section 2 of this act is not repealed by Laws of 1890, chapter 565, section 180.

tificates of incorporation thereof are filed, an amended certificate of incorporation, complying in every other respect than as to the number of signers, who shall be not less than five, and as to the number of directors, who shall be not less than five, with the provisions of sections one and two of chapter one hundred and forty of the laws of eighteen hundred and fifty, entitled "An act to authorize the formation of railroad corporations and to regulate the same," and may also in and by such certificate amend the corporate name of such corporation, by adding before the word "company" in its corporate name the words "and railroad," and upon the filing of such certificate the said corporation shall have the right to build, maintain and operate by electricity as a motive power a railroad not exceeding twenty miles in length and not a street surface railroad, and such corporation shall otherwise be subject to all the provisions of the general railroad laws of the state, and have all the powers, rights and privileges thereby conferred upon railroad corporations.

§ 2. This act shall not apply to any railroad now located in whole or in part or hereafter to be located in any city in this state.

§ 60. PLANK-ROAD AND TURNPIKE COMPANIES AUTHORIZED TO LAY DOWN RAILS. LAWS OF 1879, CHAPTER 214.

SECTION 1. Any plank-road or turnpike company shall have power and is authorized to lay iron rails on their road suitable for the use of wagons and vehicles drawn by horses going over its road, except in the counties of Cortland, Orleans, Kings, Oneida, New York and Steuben.

Nothing contained in this act shall permit or authorize the using of steam on any plank-road or turnpike. *Idem*, § 2.

CHAPTER II.

RAILWAY TICKETS AND BAGGAGE.

- SECTION 61. Railroad companies to make annual statements of rates of fare to be charged immigrants and second class passengers.
62. Immigrant tickets; how endorsed.
 63. Rate of fare for transportation of immigrants; immigrants to be furnished with seats, etc.
 64. Penalty for violation of the foregoing provisions.
 65. Proceedings on the arrest of an offender.
 66. Sale of immigrant tickets in the city of New York; how regulated.
 67. Proceedings upon violation of the foregoing provisions.
 68. Penalty for violation of foregoing provisions.
 69. Restrictions against soliciting immigrants as passengers before landing in New York city.
 70. Sales of passenger tickets at excessive rates; how punished.
 71. Sleeping car tickets; how indorsed.
 72. Free passes on railroads.
 73. Description of unclaimed trunks and baggage to be entered in a book.
 74. Description of property to be made and published.
 75. If property not claimed for sixty days, to be opened and inventory to be made, and sold at public auction.
 76. Expense to be a lien upon the property.
 77. Penalty.

§ 61. RAILROAD COMPANIES TO MAKE ANNUAL STATEMENTS OF RATE OF FARE TO BE CHARGED IMMIGRANTS AND SECOND-CLASS PASSENGERS; LAWS OF 1855, CHAPTER 474.

SECTION 1. It shall be the duty of all companies, associations and persons, hereinafter undertaking to transport or convey, or engaged in transporting or conveying by railroad, steamboat, canal boat or propeller, any immigrant, second class, steerage, or deck passenger, from the city, bay or harbor of New York, to any point or place, distant more than ten miles therefrom, or from the cities of Albany, Troy and Buffalo, the town or harbor of Dunkirk, or the Suspension Bridge, to any other place or places, to deliver to the mayors of the city of New York, Albany, Troy and Buffalo, on or before the first day of April in each or every year, a written or

printed statement of the price or rates of fare, to be charged by such company, association or person, for the conveyance of such immigrants, second class, steerage and deck passengers respectively, and the price per hundred pounds for the carriage of the luggage, and the weight of luggage to be carried free of such passengers from and to each and every place, from and to which any such company, association or person, shall undertake to transport and convey such passengers; and such prices or rates shall not exceed the prices and rates charged by the company, association or person, after the time of delivering such statements to the said mayors; and such statements shall also contain a particular description of the mode and route by which such passengers are to be transported and conveyed, specifying whether it is to be by railroad, steamboat, canal boat or propeller, and what part of the route is by each, and also the class of passage, whether by immigrant trains, second class, steerage or deck passage. In case such companies, association or person, shall desire thereafter to make any change or alteration in the rates or prices of such transportation and conveyance, they shall deliver to the said mayors respectively a similar statement of the prices and rates as altered and changed by them; but the rates and prices so changed and altered, shall not be charged or received until five days after the delivery of the statements thereof, to the said mayors respectively.

§ 62. IMMIGRANT TICKETS; HOW INDORSED; LAWS OF 1855,
CHAPTER 474.

SECTION 2. Every ticket, receipt or certificate which shall be made or issued by any company, association or person, for the conveyance of any immigrant, second class, steerage or deck passengers, or as evidence of their having paid for a passage, or being entitled to be conveyed from either or any of the points or places in the first section of this act mentioned to any other place or places, shall contain or have indorsed thereon a printed statement of the names of the particular railroad or railroads, and of the line or lines of steamboats, canal boats and propellers, or of the particular boats or propellers, as the case may be, which are to be used in the transportation and conveyance of such passengers, and also the price or the rate of fare charged or received for the transportation and conveyance of any such passenger or passengers with his or their luggage.

§ 63. RATE OF FARE FOR TRANSPORTATION OF IMMIGRANTS ;
IMMIGRANTS TO BE FURNISHED WITH SEATS, ETC.
LAWS OF 1855, CHAPTER 474.

SECTION 3. It shall not be lawful for any person or persons to demand or receive, or bargain for the receipt of any greater or higher price or rate of fare for the transportation and conveyance of any such immigrant, second class, steerage, or deck passengers with their luggage, or either, from either or any of the points or places in the first section of this act mentioned, to any other point or place, than the prices or rates contained in the statements, which shall be delivered to the mayors of the cities of New York, Albany, Troy and Buffalo, and said commissioners respectively, as in the said first section provided for, or the price or rates which shall be established and fixed for the transportation and conveyance of such passengers and their luggage, or either, by the proprietors or agents of the line or lines, or means of conveyance by which such passenger or passengers and their luggage are to be transported or conveyed. In all cases each immigrant over four years of age conveyed by railroad, shall be furnished with a seat with permanent back to the same, and when conveyed by steamboat, propellor or canal boat, shall be allowed at least two and one-half feet square in the clear on deck. Such deck shall be covered and made water-tight over head, and shall be properly protected at the outsides by curtains or partitions, and shall be properly ventilated.¹

§ 64. PENALTY FOR VIOLATION OF THE FOREGOING PROVISIONS. LAWS OF 1855, CHAPTER 474.

SECTION 4. Any company, association, person or persons violating or neglecting to comply with any of the provisions of the first or second sections of this act, shall be liable to a penalty of two hundred and fifty dollars for each and every offense, to be sued for and recovered in the name of the people of this State; and every person violating any of the provisions of the third section of this act shall be deemed guilty of a misdemeanor, and on conviction thereof, the person offending may be punished by a fine of two hundred and fifty dollars, or by imprisonment not exceeding one year, or by both fine and imprisonment, in the discretion of the

¹For the places referred to in the foregoing section, see section one of the same act.

court; one-half of which fines when recovered shall be paid to the informer and the other half into the county treasury where the action shall be tried or the conviction had.¹

§ 65. PROCEEDINGS ON ARREST OF AN OFFENDER. LAWS OF 1855, CHAPTER 474.

SECTION 5. It shall be the duty of every magistrate who shall issue a warrant for the apprehension of any person or persons for violating the provisions of the third section of this act, within twenty-four hours after such person or persons shall have been taken and brought before him, to take the testimony of any witness who may be offered to prove the offense charged, in the presence of the accused, who may, in person or by counsel, cross-examine such witness. The testimony so taken shall be signed by the witness, and be certified by the magistrate, and in case such magistrate shall commit the accused to answer the charge, he shall immediately thereafter file the testimony so taken with the district attorney of the county in which the offense was committed, to be used on the trial of or any other further proceedings against the accused; and the testimony so taken shall be deemed valid and competent for that purpose, and be read and used with the like effect as if such witness were orally examined on such trial or proceedings. After the testimony of any witness shall be so taken, he shall not be detained, nor be imprisoned, or compelled to give any recognizance for his future appearance as a witness on any trial or proceeding thereafter to be had in the premises.²

§ 66. SALE OF IMMIGRANT TICKETS IN THE CITY OF NEW YORK—HOW REGULATED. LAWS OF 1868, CHAPTER 793.

SECTION 1. It shall not be lawful for any railroad company, or for any agent, employee or other officer of any railroad company, or for any other person, to sell, offer for sale, or otherwise dispose of any ticket or tickets, or written or printed instruments, or instruments partly written and partly printed, for the transportation or conveyance on or by any railroad or steamboat, of any immigrant or deck or steerage or second class passenger, arriving at the port of New York from a foreign country, at any place or places in the city of New York, except such as may be designated by the commissioners of emigration; which place or places

¹ See preceding sections for sections one and two of this act.

² See section three of this act.

may from time to time, as they may deem best, be changed by the said commissioners, provided, however, that nothing herein contained shall prevent any railroad company from selling tickets to any persons at the rates of fare charged for first class passengers, nor from selling tickets at the principal ticket offices of such company, to immigrants and other second class passengers, provided such company has, at the same time, an agent who shall sell tickets at the place designated by the said commissioners for selling tickets to immigrants. The commissioners of emigration shall furnish every railroad company of this State desiring such privilege to have an agent at each and every place so designated by them to sell tickets to immigrants and other second class passengers, but if any such agent shall be found by said commissioners to have been guilty at any time, while acting as an agent, of defrauding immigrants, or of any other wrongful or disgraceful conduct, they shall exclude such agent and it shall be the duty of the railroad company to appoint another agent in his place.

§ 67. PROCEEDINGS UPON VIOLATION OF THE FOREGOING PROVISION. LAWS OF 1868, CHAPTER 793.

SECTION 2. Whenever any person or persons may be complained of, and arrested for violating any of the provisions of this act, or of any act for the benefit or protection of immigrants or passengers arriving at the port of New York, or about to depart therefrom, it shall be the duty of the magistrate before whom such complaint is made, to take and reduce to writing, in the presence of the person or persons complained of, the evidence of any witness which may be offered, either on behalf of the prosecution or of the person complained of, allowing the opposing party an opportunity to cross-examine the witness, and the depositions so taken shall be subscribed respectively by the witnesses making the same, and certified by the magistrate; and when so taken and certified the said deposition shall be filed in the office of the clerk of the court of oyer and terminer, in and for the city and county of New York; and upon the trial of any party accused, in whose presence any such deposition shall have been taken upon any complaint or charge made against him, relative to the same transaction, such deposition may be read by either party with the same effect as if the same witness were sworn, and his testimony taken in open court upon such trial, provided it shall appear thereby that the witness at the time the deposition was taken, was a resi-

dent of this State on his way to some other State, territory or province or country, or a resident of another State, territory or province, or an immigrant from a foreign country; and provided further that it shall not be shown to the court that the witness at the time of the trial is within its jurisdiction.¹

§ 68. PENALTIES FOR VIOLATION OF FOREGOING PROVISIONS.
LAWS OF 1868, CHAPTER 793.

SECTION 3. Any person violating any provision of this act shall be deemed guilty of a misdemeanor, and shall, upon conviction, be punished by a fine of not less than three hundred, and not more than one thousand dollars, or by imprisonment of not less than three months, or by both said fine and imprisonment.²

§ 69. RESTRICTIONS AGAINST SOLICITING IMMIGRANTS AS PASSENGERS, BEFORE LANDING IN NEW YORK CITY.
LAWS OF 1853, CHAPTER 619.

SECTION 1. Any runner, or person acting for himself, or for or on behalf of or connected with any steamboat, railroad, or forwarding company, or emigrant boarding-house, who shall solicit or book any passengers emigrating to the United States, and arriving at the port of New York, before such passenger shall have left the vessel in which he has so arrived, or who shall enter or go on board any ship or vessel, so arriving with emigrant passengers, prior to the landing of such passengers therefrom, and also any person, company or corporation having employed such person for the purpose of soliciting and booking such passengers prior to their leaving the vessel in which they may arrive, shall be severally subject to a penalty of one hundred dollars for each offence, to be sued for and recovered in the same manner, and subject to the same provisions of law as enacted in respect to other penalties imposed by the several acts regulating the powers and duties of the commissioners of emigration. Any person violating the provisions of this section may also be indicted for a misdemeanor, which violation shall be held and taken to be a misdemeanor, and he shall, on conviction, be punished by fine not exceeding one hundred dollars, or imprisonment for sixty days.

¹ See preceding sections.

² See last two sections, *ante*.

§ 70. SALES OF PASSENGER TICKETS AT EXCESSIVE RATES; HOW PUNISHED. PENAL CODE, SECTION 626.

1. A person who sells, or causes to be sold, a passenger ticket, or order for such ticket on any railway, vehicle or vessel, to any immigrant passenger at a higher rate than one and a quarter cents per mile; or, 2. Takes payment for any such ticket or order for a ticket under a false representation as to the class of the ticket, whether immigrant or first class; or, 3. Directly or indirectly, by means of false representations, purchases or receives from an immigrant passenger any such ticket; or, 4. Procures or solicits any such passenger having such a ticket, to exchange the same for another passenger ticket; or, 5. Solicits or books any passenger arriving at the port of New York from a foreign country, before such passenger has left the vessel on which he has arrived, or enters or goes on board any vessel arriving at the port of New York from a foreign country, having immigrant passengers on board, for the purpose of soliciting or booking such passengers, and a person or agent of a corporation employing any person for the purpose of booking such passengers before leaving the ship, is guilty of a misdemeanor.¹

§ 71. SLEEPING CAR TICKETS; HOW INDORSED. LAWS OF 1855, CHAPTER 125.

SECTION 2. All the tickets issued for the use of sleeping cars shall have plainly written or printed thereon "Sleeping car," and all persons using a sleeping car shall be furnished with such tickets.²

§ 72. FREE PASSES ON RAILROADS. LAWS OF 1867, CHAPTER 4.

SECTION 1. Chapter seven hundred and ninety-eight of the Laws of eighteen hundred and sixty-six, entitled "An act prohibiting the issue of free passes on the railroads of this State," is hereby repealed.

¹ Section 726 of the Penal Code provides that nothing in that Code shall affect any act relating to immigrants or other passengers in vessels coming from foreign countries, except as persons in the above section 626 of that Code.

² NOTE.—The New York Central Railroad Company may demand five cents, in addition to the usual rate of fare, from passengers entering the car without having purchased a ticket. Laws of 1857, chapter 228, section 2.

For an act in regard to certain office hours for the sale of tickets by the New York Central Railroad Company, see Laws of 1857, chapter 228.

§ 73. DESCRIPTION OF UNCLAIMED TRUNKS AND BAGGAGE
TO BE ENTERED IN A BOOK, LAWS OF 1837, CHAPTER
300.

SECTION 1. The proprietor or proprietors of the several lines of stages, and the proprietors of the several canal boat lines, and the proprietors of the several steamboats, and the several incorporated railroad companies, and the keepers of the several inns and taverns within this State, who shall have any unclaimed trunks, boxes or baggage within his, their or either of their custody, shall immediately enter the time the same was left, with a proper description thereof, in a book to be by them provided and kept for that purpose. In case the name and residence of the owner shall be ascertained, it shall be the duty of such person who shall have any such property as above specified to immediately notify the owner thereof by mail.¹

§ 74. DESCRIPTION OF PROPERTY TO BE MADE AND PUBLISHED.
IDEM.

SECTION 2. In case there shall not be any information obtained as to the owner, it shall be the duty of the person having the possession thereof to make out a correct written description of all such property as shall have been unclaimed for thirty days, stating the time the same came into his possession, and forward said description to the editor of the State paper, whose duty it shall be, on the first Mondays in July, October, January, and April in each year, to publish the same in the State paper once a week for three weeks successively.

§ 75. IF PROPERTY NOT CLAIMED FOR SIXTY DAYS, TO BE
OPENED AND INVENTORY TO BE MADE AND SOLD AT
PUBLIC AUCTION, IDEM.

SECTION 3. In case the said property shall remain unclaimed for sixty days after the said publication, it shall be the duty of the person or company having possession thereof to apply to a magistrate of the town or city in which said property is retained, in whose presence and under whose direction said property shall be opened and examined, and an inventory thereof taken by said magistrate; and if the name and residence of the owner is ascertained by such examination, it shall be the duty of the magistrate forthwith to direct

¹ 23 Abb. N. C., 257 n.

a notice thereof to such owner by mail; and if said property shall remain unclaimed for three months after such examination, it shall be the further duty of the person or company having possession thereof to apply to a magistrate as aforesaid; and if such magistrate shall deem such property of sufficient value, he shall cause the same to be sold at public auction, giving six days previous notice of the time and place of such sale; and from the proceeds of such sale he shall pay the charges and expenses legally incurred in respect to said property, or a rateable proportion thereof to each claimer, if sufficient for the payment of the whole amount; and the balance of the proceeds of such sale, if any, the said magistrate shall immediately pay to the overseers of the poor of said town or city, for the use of the poor thereof; and the said overseers shall make an entry of said amount, and the time of receiving the same, upon their official records, and it shall be subject, at any time within seven years thereafter, to be reclaimed by and refunded to the owner of such property, his heirs or assigns, on satisfactory proof of such ownership.

§ 76. EXPENSE TO BE A LIEN ON THE PROPERTY, IDEM.

SECTION 4. The person making the entry of unclaimed property, as above specified, shall be entitled to twelve and a half cents for each trunk, box, bale, package or bundle so entered, and shall have a lien on the property so entered until payment shall be made, or in case any additional expense shall be incurred for printing, the lien shall continue until payment shall be made for such additional expense.

§ 77. PENALTY, IDEM.

SECTION 5. In case any person shall neglect or refuse to comply with the provisions of this act, he shall forfeit the sum of five dollars for each and every trunk, box, bundle of baggage so neglected, as above specified, to the benefit of any person who shall sue for the same in his own name in an action of debt in any court, having cognizance thereof.

CHAPTER III.

FURTHER PROVISIONS RELATING TO THE OPERATION OF RAILROADS; RIGHTS AND DUTIES OF EMPLOYEES.

- SECTION 78. Superintendents of certain railroads authorized to seize milk cans.
79. Further provisions in regard to milk cans.
80. Persons of intemperate habits to be refused employment by railroad companies, etc.
81. Character of oils used in cars.
82. Prevention of contagious diseases.
83. Prevention of contagious diseases of animals.
84. The tramp act.
85. Employees of corporations may cease work to vote without loss of pay.
86. Corporations not to use "Pay envelopes," or post notices to influence or intimidate voters.
87. Provisions for the preservation of game.
88. Prevention of accidents to children.
89. No railroad to cross rural cemeteries.
90. Adjustment of grievances between employer and employees.
91. Interchange of passengers and freight in certain cases.

§ 78. SUPERINTENDENTS OF CERTAIN RAILROADS AUTHORIZED TO SEIZE MILK CANS. LAWS OF 1865, CHAPTER 295.

SECTION 3. The several superintendents of the milk departments of the New York and Harlem, Hudson River, and Erie Railroad companies, when thereto authorized by the owner thereof, are empowered to collect, gather and take into possession from any person or persons or wherever illegally found, any marked cans of milk-dealers wrongfully taken; and, in case of resistance, may call to their aid the assistance of any constable or public officer to carry out the requirements of this act.

Quare, if the foregoing act is not superseded by Laws of 1887, chapter 401, of which certain sections follow.

§ 79. FURTHER PROVISIONS IN REGARD TO MILK CANS. LAWS OF 1887, CHAPTER 401.

SECTION 11. *Right of railroad superintendents in relation to milk cans.*—The owner or owners, dealer or dealers, shipper or shippers, and the several superintendents of the various railroad companies and the branches and connections thereof, and steamboat lines operating their lines, or any portion thereof in the State of New York,

or elsewhere, shall have power to collect, gather and take into possession from any person or persons within the State of New York, or wherever found in said State, any such milk or cream can or cans, and shall have power to appoint an agent therefor.

§ 12. *What shall constitute evidence of appointment of agent.*—The certificate of any superintendent of any of the railroad companies or steamboat lines mentioned in this act, or other person or persons authorized thereto, in this act, appointing an agent to collect such can or cans duly acknowledged before a notary public, shall be presumptive evidence of the authority of such agent.

§ 13. *Powers of such agent.*—Such agent shall have full power to collect, gather and take into his possession from any person or persons, or wherever found, any such milk or cream can or cans, and in case of resistance may call to his aid the assistance of any constable or police officer, who shall assist him to take possession of such can or cans.

§ 80. PERSONS OF INTEMPERATE HABITS TO BE REFUSED
EMPLOYMENT BY RAILROAD COMPANIES, ETC. LAWS
OF 1857, CHAPTER 628.

SECTION 31. All incorporated companies and persons in this State, engaged in conveying passengers, including especially, all railroad, steamboat and ferry companies, and all kinds of corporations conveying for hire, persons or property, shall be and hereby are required to refuse employment to all persons who, on good and sufficient proof, shall be shown to indulge in the intemperate use of intoxicating drinks, and any such company which shall retain in its employ any person or persons who shall, on competent proof, be shown to be intoxicated at any period whilst in the active service of said company or person, either as engineer, conductor, fireman, switchtender, commander, pilot, mate or foreman, or be in any way connected with the moving power or management, or whose duty, if neglected, would diminish the safety and security of life, limb or property, entrusted thereto, said company or corporation shall be liable to pay a sum of not less than fifty dollars nor more than one hundred dollars to the county treasurer in the county where the offense may be committed and proved, before any court of competent jurisdiction.¹

¹ For the enforcement of the above penalty, see the excise laws, sections 22-30, chapter 628, Laws 1877, as amended by sections 1, 2, chapter 820, Laws 1873; also, see 16 How. Pr., 46; 35 N. Y., 154.

§ 81. CHARACTER OF OILS USED IN CARS. LAWS OF 1882,
CHAPTER 292.

* * * * *

Oils that ignite below 300 degrees Fahrenheit not to be burned in cars.

SECTION 2. No oil or burning fluid, whether composed wholly or in part of coal oil and petroleum or their products, or other substance or material, which will ignite at a temperature below three hundred degrees by the Fahrenheit thermometer, shall be burned in lamp, vessel, or other stationary fixture of any kind, or carried as freight, in any passenger or baggage car or passenger boat moved by steam power in this State, or in any stage or street car drawn by horses. Exceptions as regards the transportation of coal oil, petroleum and its products, are hereby made when the same is securely packed in barrels or metallic packages, and permission is hereby granted for its carriage in passenger boats moved by steam power when there are no other public means of transportation. Any violation of this act shall be deemed a misdemeanor and subject the offending party or parties to a penalty not exceeding three hundred dollars, or imprisonment not exceeding six months, at the discretion of the court.

* * * * *

§ 5. It shall be the duty of all district attorneys of the counties in this State to represent and prosecute in behalf of the people, within their respective counties, all cases of offenses arising under the provisions of this act.

* * * * *

§ 82. PREVENTION OF CONTAGIOUS DISEASES. LAWS OF
1886, CHAPTER 329.

SECTION 1. *In what cases hermetically sealed casket is requisite.*—Whenever the body of any deceased person is to be transported over the railroads of this State, or upon any passenger steamboat plying upon the rivers of this State, the board of health to which application is made for a transit permit for the transportation of such body shall, if the physician's certificate, or the permit accompanying such body, state the cause of death to have been a contagious or infectious disease, require that such body be inclosed in an hermetically sealed casket of metal or other indestructible material.

§ 83. PREVENTION OF CONTAGIOUS DISEASES OF ANIMALS.
LAWS OF 1878, CHAPTER 134.

(So much of section two of the said act as is applicable to railways.)

SECTION 2. To order all or any animals coming into the State to be detained at any place or places for the purpose of inspection and examination.

To prescribe regulations for the destruction of animals affected with infectious or contagious disease, and for the proper disposition of their hides and carcasses, and of all objects which might convey infection or contagion, provided that no animal shall be destroyed unless first examined by a medical or veterinary practitioner in the employ of the Governor as aforesaid.

To prescribe regulations for the disinfection of all premises, buildings, boats and railway cars, and of all objects from or by which infection or contagion may take place or be conveyed.

To alter and modify from time to time, as he may deem expedient, the terms of all such proclamations, orders and regulations, and to cancel or withdraw the same at any time. *(As amended by chap. 286, Laws of 1888.)*

§ 84. THE TRAMP ACT, LAWS OF 1885, CHAPTER 490.

* * * * *

Penalty for entering building without consent.

SECTION 4. Any tramp who shall enter any building against the will of the owner or occupant thereof, under such circumstances as shall not amount to burglary, or willfully or maliciously injure the person or property of another, which injury under existing law does not amount to a felony, or shall be found carrying any firearms or other dangerous weapon, or burglar's tools, or shall threaten to do any injury to any person or to the real or personal property of another, when such offense is not now punishable by imprisonment in the state prison, shall be deemed guilty of felony, and on conviction, shall be punished by imprisonment in the State prison at hard labor for not more than three years.

The term "building," as used in this chapter, includes a railway car, vessel, booth, tent, shop, or erection or enclosure. Penal Code, § 504.

§ 85. EMPLOYEES OF CORPORATIONS MAY CEASE WORK TO VOTE WITHOUT LOSS OF PAY; PENALTY FOR REFUSAL. LAWS OF 1890, CHAPTER 262.

SECTION 26. Any person entitled to vote at a general election, held within this State, shall, on the day of such election, be entitled to absent himself from any service or employment in which he is then engaged or employed, for a period of two hours between the time of opening and the time of closing the polls; and such voter shall not, because of so absenting himself, be liable for any penalty, nor shall any deduction be made on account of such absence from his usual salary or wages. Provided, however, that application shall be made for such leave of absence prior to the day of election. The employer may specify the hours during which such employee may absent himself as aforesaid. Any person or corporation who shall refuse to an employee the privilege hereby conferred, or who shall subject an employee to a penalty or reduction of wages because of the exercise of such privilege, or who shall, directly or indirectly, violate the provisions of this act, shall be deemed guilty of a misdemeanor.

§ 86. CORPORATIONS NOT TO USE "PAY ENVELOPES," OR POST NOTICES, TO INFLUENCE OR INTIMIDATE VOTERS. LAWS OF 1890, CHAPTER 94.

SECTION 410. It shall not be lawful for any employer in paying his employees the salary or wages due them to enclose their pay in "pay envelopes," upon which there is written or printed any political mottoes, devices or arguments containing threats, express or implied, intended or calculated to influence the political opinions or actions of such employees. Nor shall it be lawful for any employer, within ninety days of general election, to put up or otherwise exhibit in his factory, work-shop or other establishment or place where his employees may be working, any hand-bill or placard containing any threat, notice or information that in case any particular ticket or candidate shall be elected, work in his place or establishment will cease, in whole or in part, or his establishment be closed up, or the wages of his workmen be reduced, or any other threats, express or implied, intended or calculated to influence the political opinions or actions of his employees. This section shall apply to corporations as well as to individuals; and any person or corporation violating the provisions of this section

shall be deemed guilty of a misdemeanor, and any corporation violating this section shall forfeit its charter.

§ 87. PROVISIONS FOR THE PRESERVATION OF GAME.
LAWS OF 1879, CHAPTER 534.

SECTION 1. *Restrictions as to transportation of venison or deer.*
—No person, common carrier, corporation, association or company shall at any time carry or transport in this State, or have in possession for the purpose of transportation, any wild deed* or venison, taken, caught, killed or captured in the counties of this State, or in either of them, except the counties of Queens and Suffolk, and any person, common carrier, corporation, association or company which has in his or its possession any such wild deer or venison, taken, caught, killed or captured in any of the said counties of the State, as aforesaid, or in either of them, except the counties of Queens and Suffolk, shall be deemed to have them in possession in violation of this act, except, however, that they may transport or have in possession for the purposes of transportation from the fifteenth day of August to the fifth day of November, not more than one carcass of wild deer or venison, taken, caught, killed or captured in said counties as aforesaid, or either of them, for each owner of said carcass as aforesaid; provided that such carcass be accompanied by the owner. This section shall not apply to the head or feet of wild deer when severed from the carcass. Any person offending against any of the preceding provisions of this section shall be deemed guilty of a misdemeanor, and in addition thereto shall be liable to a penalty of one hundred dollars for each wild deer or fawn so killed, hunted, pursued or trapped, or for each carcass or part thereof transported or had in possession for transportation in violation of this act, and for every spring gun so set, or wild deer or fawn skin, or venison, had in possession, and may be proceeded against therefor in any county in this State in which the offense was committed or in which the offender or prosecutor may reside, or have an office for the transaction of business. (*As amended by chap. 501, Laws of 1888.*)

* * * * *

§ 10. *Restrictions as to transporting game birds.*—No person, carrier, corporation, association or company shall, at any time, carry or transport or have in his or its possession for the purpose

* So in original.

of transportation, any ruffed grouse, commonly called partridge, or pinnated grouse, commonly called prairie chicken, or woodcock, caught or killed in that portion of this state constituting the forest preserve; and any person, carrier, corporation, association or company, which has in his or its possession any ruffed grouse, commonly called partridge, or pinnated grouse, commonly called prairie chicken, or woodcock, caught or killed in the counties included in the forest preserve, shall be deemed to have them in his or its possession in violation of this section; provided, however, that they may transport from the forest preserve or have in possession for the purpose of transportation the above named birds or fowls from the first day of September to the first day of January in any year, caught or killed in the forest preserve, provided that they be accompanied by the owner. Any person or company offending against this provision shall be deemed guilty of a misdemeanor, and in addition thereto shall be liable to a penalty of twenty-five dollars for each bird or fowl so killed or had in possession during the prohibited season aforesaid; or for each carcass transported or had in possession for transportation in violation of this section. (*As amended by chap. 90, Laws of 1890.*)

§ 88. PREVENTION OF ACCIDENTS TO CHILDREN. LAWS OF 1880, CHAPTER 585.

SECTION 1. *No minor child to be allowed to ride on platform, steps, etc.*—No minor child within this State not being a passenger shall be allowed upon the platform or steps of any railroad car drawn by steam, or of any omnibus, street car or other vehicle drawn by horses, and the parents or guardians of any child who shall permit such child to ride or play upon the steps or platform of any such railroad car, omnibus, street car or other vehicle, shall be punished on conviction by a fine not less than \$5 nor more than \$10.

§ 2. *Duty of policemen and constables to arrest.*—It shall be the duty of all constables and policemen within this State to arrest any child or children violating the provisions of this act. And any such child or children shall likewise on conviction be punished by a fine not exceeding \$5 for each offense.

§ 89. NO RAILROAD TO CROSS RURAL CEMETERIES. LAWS OF 1847, CHAPTER 133.

* * * * *

SECTION 10. *No street, road, avenue or thoroughfare to be laid out through a cemetery.*—The cemetery lands and property of any asso-

ciation formed pursuant to this act, and any property held in trust by it for any of the purposes mentioned in section nine of this act, shall be exempt from all public taxes, rates and assessment, and shall not be liable to be sold on execution, or be applied in payment of debts from any individual proprietor. But the proprietors of lots or plots in such cemeteries, their heirs or devisees, may hold the same exempt therefrom, so long as the same shall remain dedicated for the purposes of a cemetery, and during that time no street, road, avenue or thoroughfare shall be laid out through such cemetery, or any part of the lands held by such association for the purposes aforesaid, without the consent of the trustees of such association, except by special permission of the Legislature of the State.

§ 90. ADJUSTMENT OF GRIEVANCES BETWEEN EMPLOYER AND EMPLOYEES. LAWS OF 1887, CHAPTER 63.

SECTION 13. *Act applicable to all corporations.*—Whenever the term “employer” or “employers” is used in this act, it shall be held to include “firm,” “joint stock association,” “company,” or “corporation,” as fully as if each of the last-named terms was expressed in each place.

§ 91. INTERCHANGE OF PASSENGERS AND FREIGHT IN CERTAIN CASES. LAWS OF 1862, CHAPTER 364.

SECTION 1. *Freight to be exchanged in same cars in which same is billed for transportation.*—All freight billed or consigned from points in this State, or from points on connecting railways to points reached by the Central Vermont railroad, and lines reached leased and managed by said Central Vermont Railroad, and the Ogdensburgh and Lake Champlain railroad and their connections, shall be exchanged in the same cars in which said freight is billed for transportation to its destination, and no discrimination shall be made by either of the companies named in this act, on account of said cars belonging to different corporations or carrying through all rail or other freight. Provided said cars shall be in the condition required under the rules and regulations usual and in force among connecting railroads.

§ 2. *Cars offered by one company to another to be taken in the usual manner.*—All passenger, sleeping, baggage or other cars offered by one company to the other shall be taken in the same

manner as is usual in the interchange of through passenger cars by connecting railroads.

§ 3. *No additional charge to be made.*—No additional charge shall be made by reason of one company taking from the other for transportation to destination any cars, freight or passengers under the provisions of this act.

§ 4. *Penalty for violation of this act.*—Either of the companies named in this act violating the provisions of the same shall forfeit to the other as liquidated damages for each case of refusal or neglect to comply with the terms of this act the sum of \$500.

AMENDMENT TO RAPID TRANSIT ACT.

COMPANIES MAY ERECT ELEVATED RAILROADS AS APPROACHES TO BRIDGES; GENERAL PLAN TO BE SUBMITTED TO COMMON COUNCIL; PROCEEDINGS. LAWS OF 1892, CHAPTER 102.

SECTION 1. Chapter four of the laws of eighteen hundred and ninety-one, entitled "An act to provide for rapid transit railways in cities having over one million inhabitants," is hereby amended by adding thereto the following section:

§ 38. The board of directors of any company incorporated for the purpose of constructing, maintaining or operating a bridge or bridges connecting a city of more than one million inhabitants with any other city in this state, and by the act of incorporation of which authority shall have been conferred or intended to be conferred, to construct, maintain or operate, as a part of or in connection with its bridge, an approach or approaches thereto extending generally in an easterly and westerly direction, may determine in lieu of constructing such approach or approaches, to build, maintain and operate an elevated railway, the route of which shall be coincident with the route of such approach or approaches as defined in said act, and shall adopt a general plan for the construction thereof, and which shall show the general mode of operation, and contain such details as to manner of construction as may be necessary to show the extent to which any street, avenue, or other public place is to be encroached upon and the property abutting thereon affected, a copy of which plan shall be transmitted to the common council of the city in which the same is to be located. Such proceedings shall thereupon be had by such com-

mon council as are provided by section five of this act, as though such plans had been transmitted by the rapid transit commissioners as contemplated in said section. Provided, that where in any such city the exclusive control of any street, route, highway or avenue, which is to be occupied by any railway or railways constructed under the provisions of this section is by law vested in any local authority other than the common council of such city, the approval of the aforesaid plans, and consent to the construction of a railway thereunder shall be given by such local authority in place of, and if required in addition to such approval and consent by such common council, and with like effect.

Consents of property owners, etc.; conditions; power of companies; limitations.—Upon obtaining the approval and consent of the local authorities as in said section provided, the said board of directors shall take the necessary steps to obtain, if possible, the consent of the property owners along the line of the said route or routes, and all proceedings in respect of such consents or when such consents cannot be obtained shall be similar in all respects to the proceedings in said section provided. Any consent of the local authorities to construct or operate such railway shall be given only upon the condition that the rate of fare upon such elevated railway shall not exceed five cents for each passenger, and that payment of such fare shall entitle each passenger to or from said elevated railroad to free transit across the bridge or bridges with which it is intended to connect the same. When the consents of the local authorities and the property owners, or in lieu thereof, the authorization of the supreme court upon the report of the commissioners shall have been obtained, and the said company shall have accepted such condition it shall have all the powers of corporations formed under this act, it shall be authorized to build, construct, maintain and operate such elevated railway or railways, but all provisions of this act, or of any act requiring the sale of the right, privilege and franchise of constructing, maintaining and operating such railway or railways, or requiring a corporation or corporations to be organized for the purpose of acquiring such right, privilege and franchise, and all other provisions of this act or of any act inconsistent with this section, are hereby declared inapplicable to such elevated railway and to such company. The entire route of any elevated railway constructed under the provisions of this section shall not exceed three miles in length,

nor shall any part of said railway except at the termini thereof be less than sixteen feet above any street, avenue or public place, or less than fourteen feet above any existing elevated railway which may be crossed, intervened or intersected thereby. The said railway may be located and constructed so as to cross any intersecting street, avenue, highway or place otherwise exempted, except that no public park shall be occupied or crossed thereby, the structure of such elevated railway shall be liable to taxation as provided by law for similar structures.

CHAPTER IV.

THE MECHANIC'S LIEN LAW APPLICABLE TO RAILROADS.

SECTION 92. Lien upon track and appurtenances.

93. Notice to be filed.
94. Evidence on trial.
95. Action to enforce lien.
96. Lien to continue one year.
97. Priority of liens.
98. Liens, how discharged.
99. Personal liability of stockholders, etc.
100. The mechanic's lien law applicable to railroad bridges and trestle work; time to file extended.

§ 92. LIEN UPON TRACK AND APPURTENANCES. LAWS OF 1875, CHAPTER 392.

SECTION 1. Any person who shall hereafter perform any labor for a railroad corporation shall, on filing with county clerk of any county in which said railroad corporation is situated, or through which the road of such corporation passes, the notice prescribed by the second section of this act, have a lien for the value of such labor upon such railroad track, rolling stock and appurtenances, and upon the land upon which such railroad track and appurtenances are situated to the extent of the right, title and interest of such railroad corporation in the property existing at the time of filing the said notice.¹

§ 93. NOTICE TO BE FILED. IDEM.

SECTION 2. Within thirty days after the performance and completion of such labor, such person shall file a notice, in writing, with the county clerk of the county where the property is located, specifying the amount of claim, and the corporation against whom the claim is made. The county clerk shall enter the particulars of such notice in a book to be kept in his office, to be called the "lien docket," with the name of claimant, amount claimed, the name of such corporation against which such claim is made, and the date of the filing of the notice, hour and minute. A fee of

¹ 42 Hun, 53.

ten cents shall be paid to said clerk on filing such lien, and said notice, when so filed, shall thereafter operate as an incumbrance upon said property.

§ 94. EVIDENCE ON TRIAL. IDEM.

SECTION 3. Any person performing labor, in availing himself of the provisions of this act, shall, upon the trial, or at the assessment of damages, produce evidence to establish the value of such labor, and that the same was performed for such railroad corporation.

§ 95. ACTION TO ENFORCE LIEN. IDEM.

SECTION 4. Any laborer performing any work, or assignee thereof, may, after such labor is performed, and the service of the notice required by the first section of this act, bring an action in any of the courts of the county in which said property is situated to enforce said lien, requiring such railroad corporation to appear, by attorney, within thirty days after such service and answer the same, or, in default thereof, the claimant may take judgment for the amount of claim and costs.

§ 96. LIEN TO CONTINUE ONE YEAR. IDEM.

SECTION 5. Every lien created under the provisions of this act shall continue until the expiration of one year, unless sooner discharged by the court or some legal act of the claimant in the proceedings; but when a judgment is entered therein, and docketed with the county clerk within said year, it shall be a lien upon the real property of the railroad corporation against whom it is obtained, to the extent that other judgments are now made a lien thereon.

§ 97. PRIORITY OF LIENS. IDEM.

SECTION 6. The liens created and established by virtue of the provisions of this act shall be paid and settled according to the priority of the notice filed with the county clerk, as directed by the second section hereof.¹

§ 98. LIENS, HOW DISCHARGED. IDEM.

SECTION 7. All liens created by this act may be discharged as follows:

1. By filing with the county clerk a certificate of the claimant, or his successors in interest, acknowledged or proved in the same

manner as a conveyance of real estate, stating that the lien has been paid or discharged; or

2. By depositing with the court or clerk of the court a sum of money equal to double the amount claimed, which money shall be thereupon held subject to the determination of the lien; or

3. By an entry of the county clerk, made in the book of liens, that the proceedings on the part of the claimant have been dismissed by the court in which it is brought, or a judgment rendered against the said claimant; or

4. By an affidavit of the service of a notice from such railroad corporation, or its attorney, to the claimant, requiring such claimant to commence an action for the enforcement of said lien within twenty days after service of said notice, and the failure of said claimant to commence an action as aforesaid.

§ 99. PERSONAL LIABILITY OF STOCKHOLDERS, ETC., *IDEM*.

SECTION 8. Each and all the stockholders of such corporation shall be jointly and severally liable for the debts due or owing to any of its laborers or servants, other than contractors for personal service for ninety days' service, or less than ninety days' service, performed for such corporation, but shall not be liable to an action therefor, before an execution shall be returned unsatisfied in whole or in part against the corporation, and the amount due on such execution shall be the amount recoverable with costs against such stockholders, before such laborer or servant shall charge such stockholders for such ninety days' service, or less than ninety days' service, he shall give notice in writing, within twenty days after the performance of such service, that he intends to so hold him liable, and shall commence such action therefor within thirty days after the return of such execution unsatisfied, as above mentioned; and every such stockholder against whom any such recovery by such laborer or servant shall have been had, shall have a right to recover the same of the other stockholders in such corporation in ratable proportion to the amount of the stock they shall respectively hold with himself.¹

§ 100. THE MECHANICS' LIEN LAWS APPLICABLE TO RAILROAD BRIDGES AND TRESTLE WORK; TIME TO FILE EXTENDED. LAWS OF 1870, CHAPTER 529.

SECTION 1. The provisions of the laws relating to mechanics'

¹ 42 Hun, 53.

liens heretofore passed shall apply to bridges and trestle work erected for railroads and materials furnished therefor, and labor performed in constructing said bridges, trestle work and other structures connected therewith, and the time within which said liens may be filed shall be extended to ninety days from the time when the last work shall have been performed on said bridges, trestle work and structures connected therewith, or the time from which said materials shall have been delivered. This act shall apply to all uncompleted work commenced previous to the passage of this act.¹

¹Sheld, 525; 42 Hun, 53.

CHAPTER V.

TAXATION OF RAILROAD CORPORATIONS.*

SECTION 101. Payment of school taxes by railroad companies.

102. Valuation of railroad property in school districts; how apportioned, etc.

103. Place of assessment of certain personal property.

104. Payment by railroad companies of commutation money for highway labor.

105. Payment of taxes by railroad companies.

106. The General Act for the taxation of corporations.

107. Collection of State taxes from delinquent corporations.

108. Taxation of corporations upon organization.

§ 101. PAYMENT OF SCHOOL TAXES BY RAILROAD COMPANIES. LAWS OF 1881, CHAPTER 675.

SECTION 1. *Duty of school collector to deliver to county treasurer certain statement; duty of county treasurer in the premises.*—It shall be the duty of the school collector in each school district in this State, except in the counties of New York, Kings and Cattaraugus, within five days after the receipt by such collector of any and every tax or assessment-roll of his district, to prepare and deliver to the county treasurer of the county in which such district, or the greater part thereof, is situated, a statement showing the name of each railroad company appearing in said roll, the assessment against each of said companies for real and personal property respectively, and the tax against each of said companies. It shall thereupon be the duty of such county treasurer, immediately after the receipt by him of such statement from such school collector, to notify the ticket agent of any such railroad company assessed for taxes at the station nearest to the office of such county treasurer, personally or by mail, of the fact that such statement has been filed with him by such collector, at the same time specifying the

* **NOTE.**—Nearly all the laws contained in Colby's Railroad Laws of New York, chapters 1-30, inclusive, were repealed by the General Railroad Act, and other Acts of 1890. But few changes, however, have been made in the laws contained in chapters 31-41, in the aforesaid book, and the present and remaining chapters of this Supplement may be considered as a continuation of those chapters or portions of Colby's work which contain corresponding subjects. This and the following chapters contain with a few exceptions only those laws enacted since 1881. Chapters 31-41 in Colby's work should be consulted for laws, now in force, passed prior to 1881.

amount of tax to be paid by such railroad company. (*Thus amended, Laws of 1885, chap. 533.*)

§ 2. *Time in which tax may be paid with one per cent fees.*—Any railroad company hereafter organized, or which may hereafter be organized, under the laws of this State, may, within thirty days after the receipt of such statement by such county treasurer, pay the amount of tax so levied or assessed against it in such district and in such statement mentioned and contained, with one per centum fees thereon, to such county treasurer, who is hereby authorized and directed to receive such amount and to give proper receipt therefor.

§ 3. *If tax not paid within thirty days, duty of collector to collect; limitation.*—In case any railroad company shall fail to pay such tax within such thirty days, it shall be the duty of such county treasurer to notify the collector of the school district in which such delinquent railroad company is assessed, of its failure to pay said tax, and upon receipt of such notice it shall be the duty of such collector to collect such unpaid tax in the manner now provided by law, together with five per centum fees thereon; but no school collector shall collect by distress and sale any tax levied or assessed in his district upon the property of any railroad company, until the receipt by him of such notice from the county treasurer.

§ 4. *Tax to be placed to credit of school district; paid to collector on demand; fees to go to collector on demand.*—The several amounts of tax received by any county treasurer in this State under the provisions of this act, of and from railroad companies shall be by such county treasurer placed to the credit of the school district for or on account of which the same was levied or assessed, and on demand paid over to the school collector thereof, and the one per centum fees received therewith shall be placed to the credit of, and on demand paid to, the school collector of such school district.

§ 5. *Tax may be paid to collector direct.*—Nothing in this act contained shall be construed to hinder, prevent, or prohibit any railroad company from paying its school tax to the school collector direct, as now provided by law.

§ 102. VALUATION OF RAILROAD PROPERTY IN SCHOOL DISTRICTS; HOW APPORTIONED, ETC. LAWS OF 1867, CHAP. 694.

SECTION 1. *Duty of town assessors.*—It shall be the duty of the town assessors, within fifteen days after the completion of their

annual assessment-list, to apportion the valuation of the property of each and every railroad, telegraph, telephone and pipe-line company as appears on such assessment-list, among the several school districts in their town, in which any portion of said property is situated, giving to each of said districts their proper proportion, according to the proportion that the value of said property in each of such districts bears to the value of the whole thereof in said town. (*Thus amended by chap. 414, Laws of 1884.*)

§ 2. *Apportionment.*—Such apportionment shall be in writing, and shall be signed by said assessors, or a majority of them, and shall set forth the number of each district and the amount of the valuation of the property of each railroad, telegraph, telephone and pipe-line companies apportioned to each of said districts; and such apportionment shall be filed with the town clerk, by the said assessors, or one of them, within five days after being made; and the amount so apportioned to each district shall be the valuation of the property of each of said companies, on which all taxes against said companies in and for said districts shall be levied and assessed, until the next annual assessment and apportionment. (*Thus amended by chap. 414, Laws of 1884.*)

§ 3. *When assessors neglect to make apportionment.*—In case the assessors shall neglect to make such apportionment, it shall be the duty of the supervisor of the town, on the application of the trustees or board of education of any district, or of any railroad, telegraph, telephone and pipe-line company, to make such apportionment, in the same manner and with the like effect as if made by said assessors. (*Thus amended by chap. 340, Laws of 1885.*)

§ 4. *Town clerk to furnish certified statement when requested.*—The town clerk shall, whenever requested, furnish to the trustees or board of education of each district a certified statement of the amounts apportioned to each district, and the name of the company to which the same relates.

§ 5. *When alteration is made in school district.*—In case any alteration shall be made in any school district, affecting the property of any railroad, telegraph, telephone or pipe-line company, the officer making such alteration shall, at the same time, determine what change in the valuation of the said property in such district would be just, on account of the alteration of district, and the valuation shall be accordingly changed. (*Thus amended by chap. 340, Laws of 1885.*)

§ 103. PLACE OF ASSESSMENT OF CERTAIN PERSONAL PROPERTY. LAWS OF 1883, CHAPTER 392.

SECTION 1. All debts and obligations for the payment of money due or owing to persons residing within this state, however secured or wherever such securities shall be held, shall be deemed, for the purposes of taxation, personal estate within the state, and shall be assessed as such to the owner or owners thereof in the town, village or ward in which such owner or owners shall reside at the time such assessment shall be made (but nothing herein contained shall in any manner authorize the assessment of the same property in more than one place in this state in any one year), nor shall any personal property or estate exempt from taxation under the laws of the United States be liable to assessment under the provisions of this act.

§ 104. PAYMENT BY RAILROAD COMPANIES OF COMMUTATION MONEY FOR HIGHWAY LABOR. LAWS OF 1847, CHAPTER 344.

SECTION 1. *Railroad corporation may commute; money, how applied.*—Whenever any railroad corporation assessed in any town or road district for highway labor shall elect to commute therefor, as provided by law, such corporation shall pay the commutation money to the commissioner or commissioners of highways of such town, and such moneys shall be applied and expended in the improvement of roads and buildings and maintenance of bridges of such town. (*Thus amended, Laws of 1878, chap. 44.*)

§ 2. *Not applicable to incorporated villages when separate road district; proviso.*—This act shall not apply to incorporated villages which constitute a separate road district, nor shall it have the effect to repeal or modify chapter 66 of the Laws of 1872.

§ 105. PAYMENT OF TAXES BY RAILROAD COMPANIES. LAWS OF 1870, CHAPTER 506.

SECTION 1. *Annual statement to be delivered by clerks of the several boards of supervisors to county treasurer.*—It shall be the duty of the clerk of the board of supervisors of the several counties of this State (except New York and Kings counties), within five days after the making out or issuing of the annual tax warrants by the board of supervisors of their respective counties, to prepare and deliver to the county treasurer a statement showing the title of all

railroad corporations in such county, as appears on the last assessment roll of the towns or cities in such county, the valuation of the property, real and personal, of such corporation in each town or city, and the amount of tax assessed or levied on such valuation in each town or city in their county.

§ 2. *Railroad companies may pay tax to county treasurer ; fees of treasurer.*—Any railroad company heretofore organized under the laws of this State, or that may be hereafter organized, may, within thirty days after the receipt of such statement by the county treasurer, pay the amount of tax so assessed or levied on their property, with one per cent fees on said tax, to the county treasurer, who is hereby authorized and directed to receive such amounts and to give proper receipt therefor.

§ 3. *County treasurer to notify collector of non-payment of tax ; duty of collector.*—In case any railroad company shall fail to pay such tax within said thirty days, it shall be the duty of the county treasurer to notify the collector of all towns or cities in their county in which said company is assessed, of such failure to pay said tax, and upon receipt of such notice it shall be the duty of such collector to collect said tax in the manner now provided by law, together with five per cent fees ; but no town or city collector shall collect any tax levied or assessed upon the property of any railroad company in said county. by the supervisors of the county, until the receipt of such notice from the county treasurer.

§ 4. *County treasurer to credit taxes ; collector to be credited with fees ; surplus to be paid to supervisor.*—The several amounts of tax so received by the county treasurer, of and from railroad companies, shall be placed to the credit of the town or city for or on account of which the same was levied or assessed, and to the credit of the fund or funds to which the same is now or shall be hereafter pledged or appropriated by law, and the one per cent fees also paid shall be placed to the credit of the collector of said city or town ; and in case such amounts shall exceed the sum due from said town or city, the surplus shall, on demand, be paid to the supervisor of said town or city, who shall receive, hold and disburse the same as if received from the collector of said town or city.

§ 5. *Railroad company may pay tax to collector ; proviso.*—Nothing in this act shall be construed to prevent any railroad company from paying their tax to the collector of towns or cities as now provided by law ; nor shall the provisions of this act be construed

to repeal or in any manner interfere with the provisions of chapter 907 of the Session Laws of 1868.

§ 106. THE GENERAL ACT FOR THE TAXATION OF CORPORATIONS. LAWS OF 1880, CHAP. 542. AS AMENDED BY LAWS OF 1881, CHAP. 361.

SECTION 1. *Certain officers of company to make annual report to Comptroller on or before fifteenth of November; where dividend not declared, stock to be estimated and declared; certificate to be sent Comptroller; appeals.*—Hereafter it shall be the duty of the president or treasurer of every association, corporation or joint stock company liable to be taxed on its corporate franchise or business, as provided in section 3 of this act, to make report, in writing, to the Comptroller annually, on or before the fifteenth day of November, stating specifically the amount of capital paid in, the date, amount and rate per centum of each and every dividend declared by their respective corporations, joint-stock companies or associations during the year ending with the first day of said month. In all cases where any such corporation, joint stock company or association shall fail to make or declare any dividend upon either its common or preferred stock during the year ending as aforesaid, or in case the dividend or dividends made or declared upon either its common or preferred stock during the year ending as aforesaid shall amount to less than six per centum upon the par value of the said common or preferred stock, the treasurer and secretary thereof, after being duly sworn or affirmed to do and perform the same with fidelity, according to the best of their knowledge and belief, shall, between the first and fifteenth days of November in each year, in which no dividend has been made or declared as aforesaid, or in which the dividend or dividends made or declared upon either its common or preferred stock amounted to less than six per centum upon the par value of said common or preferred stock, estimate and appraise the capital stock of such company upon which no dividend has been made or declared, or upon the par value of which the dividend or dividends made or declared, amounted to less than six per centum, at its actual value in cash—not less, however, than the average price which said stock sold for during said year, and when the same shall have been so truly estimated and appraised, they shall forthwith forward to the comptroller a certificate thereof, accompanied by a copy of their said oath or affirmation, by them signed,

and attested by the magistrate or other person qualified to administer the same, provided, that if the Comptroller is not satisfied with the valuation so made and returned, he is hereby authorized and empowered to make a valuation thereof, and to settle an account upon the valuation so made by him for the taxes, penalties and interest due the State thereon; and any association, corporation or joint stock company dissatisfied with the account so settled may within ten days appeal therefrom to a board consisting of the Secretary of State, Attorney-General and State Treasurer, which board, on such appeal, shall affirm or correct the account so settled by the Comptroller, and the decision of said board shall be final; but such appeal shall not stay proceedings unless the full amount of the taxes, penalties and interest as due on said account, as settled by the comptroller, be deposited with the State Treasurer.¹

§ 2. *Comptroller to add ten per cent in case of failure to make report; proviso.*—If the said officers of any such corporation, joint stock company or association shall neglect or refuse to furnish the Comptroller, on or before the fifteenth day of November of each and every year, with the report aforesaid, or the certificate of appraisal and oath or affirmation, as the case may be, as required by the first section of this act, or to pay the tax imposed on such corporation, company or association within fifteen days after the first of January, as provided in the fourth section of this act, it shall be the duty of the Comptroller of the State, to add ten per centum to the tax of said corporation, company or association for each and every year for which such report or certificate of appraisal and oath or affirmation were not so furnished, or for which such tax shall not have been paid, which percentage shall be assessed and collected with the said tax in the usual manner of assessing and collecting such taxes; provided, that if said officers of any such corporation, joint stock company or association shall intentionally fail to comply with the provisions of the first or fourth section of this act for one year, the Comptroller shall report the fact to the Governor, who, if he shall be made satisfied that such failure was intentional, shall thereupon direct the Attorney-General to take proceedings in the name of the people of this State, to declare the charter or privileges of said corporation, joint

¹ 11 Abb. N. C., 40; 92 N. Y., 458; 105 id., 76; 98 id., 67; 6 St. R., 496; 26 Hun, 446; 27 id., 188; 38 id., 276; 96 N. Y., 388; 91 id., 574, 593; 93 id., 313; 32 Hun, 475, 492; 42 id., 241.

stock company or association forfeited and at an end; and for such intentional failure duly found, the charter and privileges of every such corporation, company or association shall cease, end and be determined.¹

§ 3. *Annual tax, how computed.*—Every corporation, joint-stock company, or association whatever, now or hereafter incorporated, organized, or formed under, by, or pursuant to law in this state or in any other state or country, and doing business in this state, except only savings banks and institutions for savings, life insurance companies, banks, foreign insurance companies, manufacturing or mining corporations, or companies wholly engaged in carrying on manufacture, or mining ores within this state, and agricultural and horticultural societies, associations or corporations, which exceptions, however, shall not include gas companies, trust companies, electric or steam heating, lighting and power companies, shall be liable to and shall pay a tax, as a tax upon its franchise or business, into the state treasury annually, to be computed as follows: If the dividend or dividends made or declared by such corporation, joint-stock company or association, during any year ending with the first day of November, amount to six or more than six per centum upon the par value of its capital stock, then the tax to be at the rate of one-quarter mill upon the capital stock for each one per centum of dividends so made or declared; or if no dividend be made or declared, or if the dividend or dividends made or declared do not amount to six per centum upon the par value of said capital stock, then the tax to be at the rate of one and one-half mills upon each dollar of the valuation of the said capital stock, made in accordance with the provisions of the first section of this act; and in case any such corporation, joint-stock company or association shall have more than one kind of capital stock, as, for instance, common and preferred stock, and upon one of said stocks a dividend or dividends, amounting to six or more than six per centum upon the par value thereof, has been made or declared, and upon the other no dividend has been made or declared, or the dividend or dividends made or declared thereon amount to less than six per centum upon the par value thereof, then the tax shall be at the rate of one-quarter mill for each one per centum of dividends made or declared upon the capital stock upon the par value of which the

¹ 105 N. Y., 76.

dividend or dividends made or declared amount to six or more than six per centum, and in addition thereto, tax shall be charged at the rate of one and one-half mills upon each dollar of a valuation, made also in accordance with the provisions of this act, of the capital stock upon which no dividend was made or declared, or upon the par value of which the dividend or dividends made or declared did not amount to six per centum.¹ (*Thus amended, Laws of 1890, chap. 522.*)

§ 4. *When payable.*—It shall be the duty of the treasurer or other officer having charge of any corporation, joint-stock company or association, upon which a tax is imposed by either of the preceding sections of this act, to transmit the amount of said tax to the treasury of the State within fifteen days after the first day of January in each and every year.

§ 5. Relates only to insurance companies.

§ 6. *Tax on railroad, steamboat and other companies ; rate of tax.*—In addition to the taxes above provided for, every corporation formed for railroad, canal, steamboat, ferry, express, navigation or transportation purposes, and every elevated railway company, and every other corporation, joint-stock company or association now or hereafter incorporated or organized by or under any law of this state, or now or hereafter incorporated or organized by or under the laws of any other State or country, and doing business in this State, and owning, operating or leasing to or from another corporation, joint-stock company or association, any railroad, canal, steamboat, ferry, express, navigation, pipe-line or transportation route or line or elevated railway, or other device for the transportation of freight or passengers, or in any way engaged in the business of transporting freight or passengers, and every telegraph company or telephone company incorporated under the laws of this or any other State, and doing business in this State, and every express company or association, palace car or sleeping car company or association incorporated or unincorporated, doing business in this State, shall pay to the state treasurer for the use of the State, as a tax upon its corporate franchise or franchises in this State, a tax at the rate of five-tenths of one per centum upon the gross earnings in this State of said corporation or company or association, for tolls, transportation, telegraph, telephone or express business transacted in this state.²

¹ 89 N. Y., 409; 91 id., 574; 99 id., 181; 96 id., 388; 98 id., 77; 50 Hun, 116.

² 47 Hun, 589; 50 id., 116.

§ 7. *When payable; report of gross earnings; report for six months ending June 30, 1881; ten per cent to be added in case of neglect.*—The tax imposed under section 6 of this act shall, after the 1st day of August, 1881, be paid annually on the first day of August of each year. It shall be the duty of the president, secretary or other proper officer of the corporations, joint-stock companies or associations referred to in section 6 of this act to transmit to the comptroller, on the first day of August in each year, a statement under oath or affirmation of the amount of the gross earnings of said associations, corporations or joint-stock companies derived from all sources during the year ending with the preceding thirtieth day of June, together with the amount of tax imposed thereon, by section 6. And it shall also be the duty of the president, secretary or other proper officer of the corporations, joint-stock companies or associations referred to in section 6 of this act to transmit to the comptroller on the 1st day of August, 1881, a statement, under oath or affirmation, of the amount of the gross earnings of the said associations, corporations or joint-stock companies, derived from all sources during the six months ending with the 30th day of June, 1881, together with the tax imposed thereon by section 6 of this act. And if any such corporation, joint-stock company or association shall neglect or refuse for a period of thirty days after any tax imposed by sections 6 or 7 of this act becomes due, to make returns or to pay the same, the amount thereof, with the addition of ten per centum thereto, shall be collected for the use of the State as other taxes are recoverable by law from such corporation, joint-stock company or association.¹

§ 8. *Exempt from taxation for State purposes; proviso.*—The corporations, joint-stock companies and associations mentioned in this act as taxable shall hereafter be exempt from assessment and taxation for State purposes, except upon their real estate as herein provided, but they shall in all other respects be liable to assessments and taxation as heretofore.²

§ 9. *Tax, application of.*—The taxes imposed by this act, and the revenue derived therefrom, shall be applicable to the payment of the ordinary and current expenses of the State, and if any corporation, joint-stock company, person, partnership or association shall neglect or refuse to pay any tax by this act required to be

¹ 91 N. Y., 574; 93 id., 313; 27 Hun, 188; 32 id., 491; 47 id., 589.

² 92 N. Y., 328.

paid, the same may be sued for in the name of the people of the State, and recovered in any court of competent jurisdiction, in an action to be brought by the attorney-general at the instance of the comptroller.¹

§ 10. *Saving section.*—All obligations, liabilities and taxes heretofore incurred or imposed under said act, chapter 542 of Laws of 1880, are saved and shall be enforced as if the said act had not been hereby amended.

§ 11. *Amount of capital stock employed in this State to be basis of tax; if dissatisfied, Comptroller may fix amount.*—The amount of capital stock which shall be the basis for tax under the provisions of section three of this act, in the case of every corporation, joint-stock company and association liable to taxation thereunder, shall be the amount of capital stock employed within this State. In making to the Comptroller the report in writing or certificate of estimate and appraisal of the capital stock of such corporation, joint stock company or association provided for by the first section of this act, it shall be the duty of the president or treasurer thereof as the case may be, to state specifically the amount of capital stock employed within this State, of such corporation, joint-stock company or association. Whenever the Comptroller is dissatisfied with such report or certificate of estimate and appraisal, as the case may be, of any corporation, joint-stock company or association, whose capital is only partially employed within this State, he is authorized and empowered to ascertain, fix and determine the amount of capital employed within this State, and to settle an account for the taxes and penalties due the State thereon.¹ (*Added by chap. 501, Laws of 1885.*)

§ 12. *In case of failure to make report, Comptroller may examine books and records, and make report.*—Whenever any corporation, joint-stock company or association liable to make reports or certificates of estimate and appraisal to the Comptroller, under any of the provisions of this act, shall neglect or refuse to make such report or reports within the time prescribed in this act, or shall make such report or certificate as shall be unsatisfactory to the Comptroller, the Comptroller is authorized to examine, or cause to be examined, the books and records of any such corporation, joint-stock company or association, and to fix and determine the amount

¹ 27 Hun, 188; 47 id., 589.

of tax and penalty due in pursuance of the provisions of this act, either from the said books and records, or from any other data in his possession which shall be satisfactory to him, and to settle an account for said tax and penalty together with the expenses of such examination, against said corporation, joint-stock company or association.² (*Added by chap. 501, Laws of 1885.*)

§ 13. *Comptroller may issue subpoenas and examine witnesses; penalty for failure to obey subpoena.*—Whenever the Comptroller shall deem it necessary or important to examine any person as a witness upon any subject or matter relating to the amount of capital stock of such corporation, or to use, examine or inspect any book, account, voucher or document in possession of any officer of such corporation, or other person, or under his control, relating to such capital stock and tax, he shall have the power to issue a subpoena in proper form, commanding such person or officer to appear before him or some person designated as commissioner by him by an appointment in writing, filed in the office of such Comptroller, at a time and at the place where the principal office of such corporation is situated within this State in such subpoena specified, to be examined as a witness, and such subpoena may contain a clause requiring such person or officer to produce on such examination all books, papers and documents in his possession or under his control, relating to the capital stock of such corporation and the amount thereof employed within this State. Such subpoena shall be served upon the person named by showing him the original subpoena and delivering to and leaving with him at the same time a copy thereof. The Comptroller or the commissioner so designated by him as aforesaid may administer oaths to such persons as he may desire to examine, so brought before him by subpoena or otherwise, and examine them on oath in relation to any matter which may in any wise be material in determining the amount of the tax to be paid by any such corporation, joint-stock company or association as aforesaid. Whenever any person duly subpoenaed to appear and give evidence as aforesaid, or to produce any books and papers as hereinbefore provided, shall neglect or refuse to appear or to produce such books and papers according to the exigency of such subpoena, or shall refuse to testify before said Comptroller or the commissioner so designated by him, or to answer any proper and pertinent questions, he shall be deemed

¹ 98 N. Y., 67; 105 id., 76; 6 St. Rep., 495.

² 6 St. Rep., 495.

in contempt, and thereupon any justice of the Supreme Court of the judicial district within which the principal office of such corporation within this State is situated shall, upon the motion of the Comptroller, based upon affidavit showing the commission of the offense, either, first, make an order requiring the accused to show cause before him, at a time and place specified therein, why the accused should not be punished for the alleged offense; or, second, issue a warrant of attachment directed to the sheriff of a particular county, or generally directed to the sheriff of any county where this man may be found, commanding him to bring him before said justice either forthwith or at a time and place therein specified to answer for the alleged offense. On the return of said attachment and the production of the body of the defendant therein the said justice shall have jurisdiction in the matter, and the person charged may purge himself of the contempt in the same way, and the same proceedings shall be had, and the same penalties may be imposed and the same punishments inflicted as in the case of a witness subpoenaed to appear and give evidence as is prescribed in title 3, chapter 17 of the Code of Civil Procedure, in proceedings to punish a contempt of court other than a criminal contempt. (*Added by chap. 501, Laws of 1885.*)

§ 14. *Comptroller to settle and adjust all accounts against corporations, for taxes and penalties since May 12, 1882; proviso as to payments made before August 1, 1885.*—The Comptroller is hereby authorized and directed, upon application to him made by any corporation, joint-stock company or association, to make, settle and adjust all accounts against such corporation, joint-stock company or association, for all taxes and penalties arising under the third section of this act since the 12th day of May, A. D. 1882, by taking as a basis for taxation the capital employed within the State by such corporation, joint-stock company or association. Provided, however, that such corporation, joint-stock company or association shall not be entitled to the benefits of a settlement upon such basis unless it shall have secured such adjustment and paid into the treasury the full amount of the taxes so settled, before the 1st day of August, 1885, nor shall this section apply to the case of any tax for which suit shall have been heretofore brought by the Attorney-General, in which suit the trial has been commenced, or in which judgment shall have been entered heretofore for the people for the amount of said tax. Any corporation, joint-stock company or association whose capital has heretofore been only

partially employed within this State, and which is now liable for taxes arising under the third section of this act since the 12th day of May, A. D. 1882, and which are still due and unpaid, may, at any time prior to the 1st day of August, 1885, pay to the State Treasurer, for the use of the State, in full discharge of the same, such sum of money as shall be fixed by the Comptroller as a tax due for the said period by the said corporation, joint-stock company or association, upon the basis of the capital employed within the State. Provided, that this section shall not apply to the case of any tax for which suit may have heretofore been brought by the Attorney-General, and for which judgment shall have been entered therein, or if in such suit trial has been commenced.¹ (*Added by chap. 501, Laws of 1885.*)

§ 15. *Interest.*—All accounts hereafter settled by the Comptroller agreeably to the provisions of this act shall bear interest from a date thirty days after the sending of notice of settlement hereinafter provided for until full payment thereof shall be made. (*Added by chap. 501, Laws of 1885.*)

§ 16. *Comptroller to give notice before making settlement of taxes.*—It shall be the duty of the Comptroller after making with any partnership, corporation, joint-stock company or association liable to taxation under any of the provisions of this act, the settlement of such taxes, to forthwith send notice hereof, in writing, to such person, partnership, corporation, joint-stock company or association, which notice may be sent by mail to the post-office address of such corporation, joint-stock company or association.² (*Added by chap. 501, Laws of 1885.*)

§ 17. *Provisions in relation to review of comptroller; determination by writ of certiorari.*—No writ of certiorari to review the determination and settlement of the comptroller as to the amount of capital used within the State by any corporation, joint stock company or association, and as to the tax and penalty to be paid thereon, shall be granted, except application therefor be made within thirty days after service upon such corporation, joint stock company or association by the comptroller of notice of such settlement. Nor shall any such writ be granted except the papers upon which motion therefor is to be made, including notice of motion, shall have been served upon the comptroller at least eight days

¹ 98 N. Y., 67; 6 St. Rep., 495.

² 6 St. Rep., 495.

before such motion, nor unless the corporation, joint stock company or association applying for such writ shall, before making such motion, deposit with the state treasurer the full amount of taxes, penalties and charges so settled and adjusted by the comptroller, and file with him an undertaking in such amount and with sufficient sureties, as shall be approved by one of the justices of the Supreme Court of this State, to the effect that if said writ be vacated and the determination of the comptroller sustained, the applicant for the writ will make payment of all costs and charges which may accrue against such applicant in the prosecution of such writ, including costs on all appeals. (*Added by chap. 501, Laws of 1885.*)

§ 18. *Comptroller may issue warrant for collection after thirty days.*—After the expiration of thirty days from the service by the comptroller of notice of settlement aforesaid, if no proceedings shall have been taken to review the same, as provided by this act, or if the deposit with the state treasurer of the amount of the said settlement, together with the undertaking, as provided for by this act, shall not then have been made, it shall be lawful for the comptroller to issue his warrant or warrants under his hand and seal of office directed to the sheriff of any county in this State, commanding him to levy upon and sell the goods and chattels, lands and tenements of the said corporation, joint stock company or association found within said county, for the payment of the amount of said settlement, together with interest thereon and costs of executing said warrant, and to return the said warrant to the comptroller, and pay to the state treasurer the money which shall be collected by virtue thereof, by a certain time therein specified, not less than sixty days from the date of such warrant. Such warrant shall be a lien upon and shall bind the personal estate of the person, partnership, corporation, joint stock company or association against whom it shall be issued, from the time an actual levy shall be made by virtue thereof, and the sheriff to whom such warrant shall be directed shall proceed upon the same in all respects with the like effect and in the same manner as prescribed by law in respect to executions issued against property upon judgments rendered by a court of record, and shall be entitled to the same fees and costs for his services in executing the same, to be collected in the same manner.¹ (*Added by chap. 501, Laws of 1885.*)

¹ 6 St. Rep., 495.

§ 19. *Readjustment of accounts in cases of illegal payment of taxes.*—The comptroller may at any time revise and readjust any account theretofore settled against any person, association, corporation, or joint stock company by himself or any preceding comptroller for taxes arising under this act or the act to which it is an amendment, whenever it shall be made to appear by evidence submitted to him that the same has been illegally paid or so made as to include taxes which could not have been lawfully demanded and shall resettle the same according to law and the facts and charge or credit, as the case may require, the difference, if any, resulting from such revision and resettlement upon the current accounts of such person, association, corporation, or joint stock company. (*Added by chap. 463, Laws of 1889.*)

§ 20. *Comptroller's action may be reviewed by certiorari; appeals from determination.*—The action of the comptroller, upon any application made to him by any person or corporation for a revision and resettlement of accounts as provided in this act, may be reviewed, both upon the law and the facts upon certiorari by the Supreme Court at the instance either of the party making such application or of the attorney-general in the name and in behalf of the people of this State, and for that purpose the comptroller shall return to such certiorari the accounts and all the evidence submitted to him on such application, and, if the original or resettled accounts shall be found erroneous or illegal by this court, either in point of law or fact, the said accounts shall be there corrected and restated by the said Supreme Court, and from any such determination of the Supreme Court an appeal may be taken by either party to the Court of Appeals as in other cases. (*Added by chap. 463, Laws of 1889.*)

The provisions of §§ 19 and 20 not to apply to any taxes heretofore paid by any person or corporation in pursuance of a judgment or order of a court or by virtue of any stipulation.

§ 107. COLLECTION OF STATE TAXES FROM DELINQUENT CORPORATIONS—LAWS OF 1886, CHAPTER 266.

SECTION 1. *Recovery of delinquent taxes; provisions as to prosecution of suits for such taxes.*—For the better enforcement of chapter five hundred and forty-two of the Laws of eighteen hundred and eighty and the acts amendatory thereof, it shall be lawful for any person having knowledge of the evasion of taxation under said acts by any association, corporation or joint-stock company, liable

to taxation thereunder, to report such fact to the Comptroller, together with such information as may be in his possession as may lead to the recovery of such taxes from said association, corporation or joint-stock company, and whenever in the opinion of the Attorney-General or Comptroller the interests of the State require it, either of them is hereby authorized to employ such person so reporting such evasion to assist in the collection and preparation of evidence and in the prosecution and trial of suits for such taxes; and so much of the sum collected from such delinquent association, corporation or joint-stock company, by reason of such report or such service, as shall be agreed upon by such person and the Attorney-General or Comptroller as a compensation therefor, shall be paid to such person, provided that the sum so paid shall not exceed ten per centum of the amount so collected; and provided further, that nothing whatever shall be paid to such person for such purpose unless there shall be a recovery of taxes from such delinquent association, corporation or joint-stock company by reason of such report or such services.

§ 108. TAXATION OF CORPORATIONS UPON ORGANIZATION
—LAWS OF 1886, CHAPTER 143.

SECTION 1. *State tax on capital stock.*—Every corporation, joint-stock company, or association, incorporated by or under any general or special law of this State, having capital stock divided into shares, shall pay to the state treasurer, for the use of the State, a tax of one-eighth of one per centum upon the amount of capital stock which said corporation, joint-stock company or association is authorized to have, and a like tax upon any subsequent increase thereof. The said tax shall be due and payable upon the incorporation of said corporation, joint-stock company or association or upon the increase of the capital thereof; and no such corporation, joint-stock company or association shall have or exercise any corporate powers until the said tax shall have been paid. And the secretary of state and any county clerk shall not file any certificate of incorporation or articles of association, or certify or give any certificate to any such corporation, joint-stock company or association, until he is satisfied that the said tax has been paid to the state treasurer. And no such company incorporated by any special act of the legislature shall go into operation, or exercise any corporate powers or privileges, until said tax has been paid as aforesaid. But this act shall not apply to literary, scientific,

medical and religious corporations or corporations organized under the banking laws of this State, or under chapter one hundred and twenty-two of the Laws of eighteen hundred and fifty-one, entitled "An act for incorporation of building, mutual loan and accumulation fund associations," and the acts amendatory thereof. (*Thus amended by chap. 284, Laws of 1887.*)¹

§ 2. *Applicable to general fund.*—The taxes imposed by this act and the revenue derived therefrom, shall be applicable to the general fund and for the payment of those claims and demands which shall constitute a lawful charge upon that fund.

¹ 57 Hun, 487.

CHAPTER V.

SUPPLEMENT.*

TAXATION OF RAILROAD CORPORATIONS.

- SECTION 108a. Railroad companies are subject to taxation,
 108b. Definition of word "land."
 108c. Definition of "personal estate."
 108d. Taxation of capital stock of corporations.
 108e. The same.
 108f. Corporation stock not taxed against individual owners.
 108g. Where real estate of corporations is assessable.
 108h. Personal estate of company, where assessable.
 108i. Property, how to be estimated and assessed.
 108j. Certain amended section of tax law repealed.
 108k. General provisions for the assessment of taxes on corporations,
 and the collection thereof.
 108l. Highway taxes.
 108m. Unpaid taxes on vacant lands.
 108n. Collection of taxes.
 108o. Taxes on telegraph lines.
 108p. Assessment and collection of expenses of placing electrical
 conductors underground.
 108q. Title of corporations.
 108r. Review of assessment by certiorari.
 108s. Application to reduce valuation.
 108t. Taxable transfers of property.

§ 108a. *Railroad companies are subject to taxation.*—1 R. S. 387, § 1 (1 R. S. 8th ed. vol. 2, ch. 13, tit. 1, p. 1082); 1 R. S. 414, § 1, (1 R. S. 8th ed. vol. 2, ch. 13, tit. 4, p. 1149. All lands and all personal estate within this State, whether owned by individuals or by corporations, shall be liable to taxation, subject to the exemptions hereinafter specified.¹ So also all moneyed or stock

*NOTE.—Through an inadvertence this matter was omitted from the chapter on Taxation, so it is appended as a supplement thereto.

¹ In *McMahon v. Palmer*, 102 N. Y., Ruger, Ch. J., said: "The general laws of this State require all property, both real and personal, no matter by whom owned, except in certain cases of special exemption, to be assessed for purposes of taxation. This requirement embraces all property owned by individuals as well as corporations, and includes all shares of stock held by individuals in corporations, except cases where the capital stock of such corporations is itself liable to taxation as against the corporation," aff'g 12 Daly, 362.

corporations deriving an income or profit from their capital, or otherwise, shall be liable to taxation on their capital, in the manner hereinafter prescribed.

§ 108b. *Definition of the word "land."*—1 R. S. 387, sec. 2, (1 R. S. 8th ed. vol. 2, ch. 13, tit. 1, p. 1082,) as am'd by L. 1873, c. 530, and L. 1881, c. 293. The term "land" as used in this chapter,* shall be construed to include the land itself above and under water; all buildings and other articles and structures, substructures and superstructures erected upon, under or above, or affixed to the same * * all bridges * * all surface, underground or elevated railroads; all railroad structures; substructures, and superstructures, tracks, and the iron thereon; branches, switches and other fixtures permitted or authorized to be made, laid or placed in, upon, above or under any public or private road, street or grounds. * * The term "real estate" and "real property," whenever they occur in this chapter,* shall be construed as having the same meaning as the term "land" thus defined.¹

* P. 1, c. 13; 1 R. S. 387-422.

A tax or assessment upon property arbitrarily imposed without reference to some system of just apportionment could not be upheld. *Stuart v. Palmer*, 74 N. Y. 183; 7 Barb. 131; 28 id. 319; 52 id. 106; 58 id. 436; 8 Barb. 453; 28 How. 57; 20 Hun, 481; 19 id. 460; 29 id. 549; 82 N. Y. 459; 88 id. 576; 97 id. 99; 35 id. 239; 23 id. 225; 97 id. 99; 4 Paige, 401; 5 Dem. 137; 6 id. 156; 133 N. Y. 279; 51 Barb. 354; 40 id. 335; 46 id. 591; 44 id. 158; 16 id. 651; 29 How. Pr. 272; 41 id. 496; 46 id. 319, 343; 21 id. 385; 17 id. 208; 18 Abb. Pr. 130; 53 Hun, 484; 63 N. Y. 461; 98 id. 74; 48 id. 74; 1 Abb. App. Dec. 202; 2 id. 171; 2 Sandf. 559.

¹ The track of a railroad consisting of stringers, ties and rails, affixed to the land, is for the purpose of assessment real estate, and is taxable as such to the corporation; although the fee of the land upon which it is laid belongs to another owner. *Peo. ex rel. Dunkirk, etc. Ry. Co. v. Cassity*, 46 N. Y. 46; 80 N. Y. 573; 93 id. 313; 43 Hun, 119. The foundations, columns and superstructure of an elevated railway are taxable as real estate. *Peo. ex rel. N. Y. El. Ry. Co. v. Com. of Taxes*, 82 N. Y. 459; aff'g, 19 Hun, 460. It makes no difference in respect to taxation, whether the rail is laid upon the surface of the ground or placed upon pillars or carried through a covered way or tunnel, in either case, the structures adopted to sustain it, or facilitate and protect its use, are, within the meaning of the law, land, and taxable as such. *Peo. ex rel. N. Y. & H. Ry. Co. v. Com. of Taxes*, 101 N. Y., 322; reversing 23 Hun, 687. The franchise of a railroad, although it is annexed, in a general sense, to the road, does not have the character of realty, and is not real estate under the tax laws. *People ex rel. Panama Ry. Co. v. Com. of Taxes*, 104 N. Y. 240; 2 Sandf. Ch. 552; 2 N. Y. 478; 22 id. 234; id. 243; 2 Lans. 298; 41 How. Pr. 33; 27 Hun, 559; 97 N. Y. 97.

§ 108c. *Definition of "personal estate."*—1 R. S. 388, sec. 3. (1 R. S. 8th ed. vol. 2, ch. 13, tit. 1, p. 1083.) The terms "personal estate" and "personal property," whenever they occur in this chapter,* shall be construed to include all household furniture; moneys; goods; chattels; debts due from solvent debtors, whether on account, contract, note, bond or mortgage; public stocks; and stocks in moneyed corporations. They shall also be construed to include such portion of the capital of incorporated companies, liable to taxation on their capital, as shall not be invested in real estate.¹

§ 108d. *Taxation of capital stock of corporations.*—1 R. S. 414, § 1; (1 R. S., 8th ed., vol. 2, ch. 13, tit. 4, p. 1149). All moneyed or stock corporations deriving an income or profit from their capital, or otherwise, shall be liable to taxation on their capital in the manner hereinafter prescribed.²

§ 108e. *The Same. Laws of 1857, chapter 456, section 3.*—The capital stock³ of every company liable to taxation, except such part of it as shall have been excepted in the assessment roll, or as shall have been exempted by law, together with its surplus profits or reserved funds exceeding ten per cent. of its capital, after deducting the assessed value of its real estate and all shares of stock in other corporations actually owned by such company, which are taxable upon their capital stock under the laws of this

* P. 1, c. 13; 1 R. S. 387-422.

¹ 11 St. Rep. 862; 2 Abb. Ct. App. Dec. 171; 29 How. Pr. 372; 44 Hun, 20; 2 Lans. 299; 44 Barb. 158; 40 id. 335; 48 Barb. 176; 18 id. 104; 53 id. 552; 102 N. Y. 186; 39 N. Y. 87.

² 4 Cow. 556; 10 Wend. 186; 1 Hill, 606; 8 Barb. 453; 15 How. Pr. 173; 21 N. Y. 449; 23 id. 192; 29 How. Pr. 371; 36 N. Y. 61; 48 id. 79; 46 id. 52; 18 Wend. 605; 31 Hun, 570; 32 id. 493; 29 id. 549; 88 N. Y. 576; 93 id. 308, 313; 104 U. S. 466; 97 N. Y. 99; 98 id. 74; 5 Dem. 137; 6 id. 156; 21 Abb. N. C. 136; id. 232; 5 Sandf. 10; 16 Hun, 197; 31 id. 570; 6 St. Rep. 805; 21 N. Y. 452; 8 id. 242; 32 Barb. 511; 28 id. 320; 7 Hill, 261, 504; id. 22; 25 Wend. 686; 4 Hill, 20; 7 id. 261; id. 504; 5 Sandf. 10; 32 Barb. 509; 20 How. Pr. 182; 44 Barb. 148; 16 Hun, 197; 4 Paige, 387; 15 How. Pr. 173; 20 id. 184; 29 id. 372; 57 id. 219; 48 N. Y. 79; 23 id. 193; 16 id. 424; 4 id. 444; 36 id. 61; 102 N. Y. 186; 20 Barb. 81; 47 id. 591; 44 id. 158. 18 St. Rep., 383; 22 id. 337.

³ The actual value of the capital stock must be taken, together with the surplus profits or reserve funds of the corporation exceeding ten per cent. of its capital, and from this is deducted the assessed value of its real estate situated in this State, and the actual value of its real estate situated outside of this State. This is to prevent double taxation of such real estate, real estate being always taxed at its locality. Davies on Taxation, p. 9, 1888.

State, shall be assessed at its actual value and taxed in the same manner as other personal and real estate of the county.¹

§ 108f. *Corporation stock not taxed against individual owners.*—1 R. S. 388, § 7, (1 R. S., 8th ed., vol. 2, ch. 13, tit. 1, p. 1084.) The owner or holder of stock in any incorporated company liable to taxation on its capital, shall not be taxed as an individual for such stock.²

§ 108g. *Where real estate of corporations is assessable.*—1 R. S. 390, section 6, (1 R. S. 8th ed. vol. 2, ch. 13, tit. 1, p. 1094.) The real estate of all incorporated companies liable to taxation, shall be assessed in the town or ward in which the same shall lie, in the same manner as the real estate of individuals.³

§ 108h. *Personal estate of company, where assessed.*—1 R. S. 390, section 6, (1 R. S. 8th ed. vol. 2, ch. 13, tit. 1, p. 1094.) All the personal estate of every incorporated company liable to taxation on its capital, shall be assessed in the town or ward where the principal office, or place for transacting the financial concerns of the company shall be; or if such company have no

¹ 51 Hun. 314; 1 id. 145; 4 id. 597; 2 id. 587; 5 id. 200; 16 id. 197; 31 id. 32; 6 id. 558; 32 id. 570; 51 N. Y. 403; 110 id. 254; 91 N. Y. 374, 580, 574, 95 id. 554; 13 Abb. N. C. 8; 22 id. 48; 23 N. Y. 194; 21 id. 455; 113 N. Y. 133; 115 N. Y. 178; 58 id. 242; 64 id. 541; 100 id. 597; 102 id. 187; 107 id. 541; 104 id. 240; 47 How. Pr. 170; 46 id. 228; 1 T. & C. 636; 11 St. Rep. 863; 32 Barb. 511; 40 id. 335; 64 How. Pr. 405, 407.

² 102 N. Y. 186; 44 Barb. 158; 40 Barb. 335; 29 How. Pr. 372.

³ A railroad corporation should be regarded, within the meaning of the tax laws in reference to real estate, as a resident of the several towns and wards through which its road extends, and the real estate of such company should not be assessed as "non-resident lands." *Peo. ex rel. Buffalo, etc. Ry. Co. v. Fredericks*, 48 Barb. 173; see 31 Barb. 138; 40 id. 374; 17 Abb. Pr. 59; id. 543; 11 Barb. 621; 15 How. Pr. 59; 15 Barb. 560; 16 id. 657; 21 N. Y. 452; 74 id. 365; 29 Hun. 485, 487; 33 id. 283; 7 Barb. 109; 31 id. 618; 12 id. 48; 19 N. Y. 408; 82 id. 351; 46 id. 55; 1 Barb. Ch. 445; 4 Paige, 394; 15 Abb. N. C. 317; 6 Hun. 556. 44 id. 545; 48 id. 195. A corporation created by the laws of this state is deemed a resident thereof, although the bulk of its property and business lies in a foreign state. *Crowles v. Panama Ry. Co.* 30 Barb. 99; 13 Pet. 519; 14 id. 129; 2 How. (U. S.) 499. As to foreign corporation having its office in this state, see *I. L. A. Co. v. Sweetland*, 14 Abb. Pr. 240. A corporation created under the laws of, is to be deemed a resident of this state, and the place of its business is to be deemed the place of its residence. *Conroe v. Ins. Co.* 10 How. Pr. 403; 4 Bing. 394; 3 Jurist, 55; 2 Eng. L. & Eq. 388; 2 Brock. 395; 2 How. (U. S.) 497; 2 Rich. 512; 5 Wend. 211; if it has several places of business, it is to be deemed a resident of each. *Pond v. H. R. Ry. Co.* 17 How. Pr. 543. See also, 7 Paige, 384; 12 Barb. 223; 1 Barb. Ch. 432.

principal office, or place for transacting its financial concerns, then in the town or ward where the operations of such company shall be carried on.

§ 108i. *Property, how to be estimated and assessed.*—1 R. S. 393, sec. 17 (1 R. S. 8th ed. vol. 2, ch. 13), tit. 2, p. 1098, as amended by laws of 1851, chapter 176, section 3. All real and personal estate liable to taxation, shall be estimated and assessed by the assessors at its full and true value, as they would appraise the same in payment of a just debt due from a solvent debtor.¹

§ 108j. *Certain amended sections of tax law repealed.*—Sections six, seven, eight and nine of title three, of chapter thirteen, of the first part of the Revised Statutes (1 R. S. 308, § 6, 6th ed., vol. 1, p. 951) had application to the tax collector calling upon the person taxed and demanding payment of the tax and of a levy in case of non-payment of tax, and a notice of sale of the goods levied upon. Section 6 of chapter 536 of the Laws of 1857 made these sections applicable to railroad corporations and regulated the manner in which a "call" for the tax should be made upon the company, and directed the service of a written notice of sale upon the treasurer or agent of the company. This amendment, however, was repealed by chapter 110 of the Laws of 1858.²

§ 108k. GENERAL PROVISIONS FOR THE ASSESSMENT OF TAXES
ON CORPORATIONS AND THE COLLECTION THEREOF.

Corporations liable to taxation.—1 R. S. 414, § 1, (1 R. S., 8th ed., vol. 2, ch. 13, tit. 4, p. 1149, *et seq.*) All moneyed or stock corporations deriving an income or profit from their capital or otherwise, shall be liable to taxation on their capital in the manner hereinafter prescribed.

To deliver statements to assessors.—Idem. § 2. The president, cashier, secretary, treasurer or other proper officer of every such incorporated company, shall, on or before the first day of July in each year, make and deliver to the assessors, or one of them, of the town or ward in which such company is liable to be taxed, according to the provisions of the sixth section of the second title of this chapter, a written statement, specifying:

¹ 48 Hun, 195; 55 N. Y. 252; 48 id. 74; 67 id. *aff'd*, 94 U. S. 415; 2 Hun, 587; 8 id. 178; 48 id. 195; 34 id. 321; 37 id. 170, 171; 42 id. 561; 2 How Pr. N. S. 455, 480; 102 N. Y. 641; 16 Barb. 244; 48 id. 177; 36 Hun, 592; 40 id. 606; 43 id. 135; 12 Barb. 223; 15 How. Pr. 63.

² 6 Hun, 559; 32 St. Rep. 603.

1. The real estate, if any, owned by such company, the town or wards in which the same is situated, and the sums actually paid therefor.

2. The capital stock actually paid in and secured, to be paid in, excepting therefrom the sums paid for real estate and the amount of such capital stock held by the State, and by any incorporated literary or charitable institution ; and,

3. The town or ward in which the principal office or place of transacting the financial business of such company is situated, or, if there be no such principal office, the town or ward in which its operations are carried on, or in which it is liable to be taxed under the provisions of this chapter.¹

To deliver statements to comptroller.—1 R. S. 415, § 3. The president or other proper officer of every such company, shall also deliver to the comptroller on or before the first day of July, in each year, a written statement, containing the same matters required by the foregoing sections to be specified in the statement to be delivered to the assessors. The statements required by this and the preceding section of this title, shall be certified under the oath of the said president, or other proper officer, to be in all respects just and true.²

Penalty.—Idem. § 4. If the statements above required, or either of them, shall not be furnished by any company to the assessors and to the comptroller within thirty days after the time above provided, the company neglecting to furnish such statements, or either of them, shall forfeit to the people of this State for each statement omitted to be furnished the sum of two hundred and fifty dollars ; and it shall be the duty of the comptroller to furnish the attorney-general with an account of all companies that shall neglect to render such lists, that he may prosecute for the penalties herein imposed.³

Suits therefor.—Idem § 5. If any company shall be prosecuted for any such penalty shall pay the costs of prosecution, and furnish the statement required, the comptroller, if he shall be satisfied that the omission was not willful, may, in his discretion, discontinue such suit.

¹ 21 N. Y. 452; 104 id. 248; 17 How. Pr. 208; 6 Hun, 558; 32 id. 493; 45 id. 6; 20 Abb. N. C. 44; 26 W. Dig. 529; 46 N. Y. 52; 39 id. 81; 28 Barb. 320; 54 Super. Ct. 371; 9 St. Rep., 469; 6 Dem. 157.

² 76 N. Y. 65; 4 Paige, 384.

³ 104 N. Y. 243.

Companies, how assessed.—Idem., § 6. The assessors shall enter all incorporated companies from which such statements shall have been received by them, and the property of such companies and the property of all other incorporated companies liable to taxation in their respective towns, in their assessment rolls, in the following manner :

1. They shall insert, in the first column of the assessment rolls, the name of each incorporated company in their respective towns or wards liable to taxation, on its capital or otherwise, and under its name they shall specify the amount of its capital stock paid in, and secured to be paid in, the amount paid by such company for real estate then belonging to such company, wherever the same may be situated, the amount of all surplus profits or reserved funds exceeding ten per cent. of the capital, after deducting therefrom the said amount of said real estate and the amount of its stock, if any, belonging to the state, and to any incorporated literary and charitable institutions. (*As amended by laws of 1853, chap. 654.*)

2. In the second column they shall enter the quantity of real estate owned by such company and situated within their town or ward, and in the third column the actual value thereof, estimated as in other cases.

3. In the fourth column they shall enter the amount of the capital stock of every incorporated company paid in, and secured to be paid in ; and of all surplus profits or reserved funds as aforesaid, after deducting the sums paid out for all the real estate of such company, wherever the same may be situated, and those belonging to it and the amount of stock, if any, belonging to the people of the state, and to incorporated literary and charitable institutions. (*As amended by laws 1853, chap. 654.*¹)

Preceding sections extended, 1 R. S. 416, § 8.—The provisions of the fifteenth section of the second title of this chapter shall be and are hereby extended to the incorporated companies in the two preceding sections named, and the president, secretary or other proper officer may make the affidavit required by said section.

Taxes to be stated and collected, 1 R. S. 416, § 15, as amended by laws of 1857, chapter 456. The amount of taxes

¹ 104 N. Y. 243; 21 id. 451; 46 id. 52; 1 Barb. Ch. 449; 24 How. Pr. 250; 39 N. Y. 82; 48 id. 71; 76 id. 64, 203; 95 id. 554; 12 Barb. 223; 7 Hill, 261; 4 Paige, 394, 401; 6 Hun, 559; 32 id. 493.

assessed on all incorporated companies liable to taxation shall be set down by the board of supervisors in the fourth column of the corrected assessment roll, and shall form a part of the moneys to be collected by the assessor. The capital stock of every company liable to taxation, except such part of it as shall have been excepted in the assessment roll, or shall have been exempted by law, together with its surplus profits or vested funds exceeding ten per cent. of its capital after deducting the assessed value of its real estate; and all shares of stock in other corporations actually owned by such company, which are taxable upon their capital stock under the laws of this state, shall be assessed at its actual value and taxed in the same manner as the other real and personal estate of the county.¹

Duty of supervisors, 1 R. S. 417, § 16.—The board of supervisors having completed the assessment, shall transmit to the comptroller, with the aggregate valuation of the real and personal estate in their county, a statement showing the names of the several municipal corporations liable to taxation in such county, the amount of the capital stock paid in and secured to be paid in by each, the amount of the real and personal property of each as put down by the assessors or by them, and the amount of taxes assessed in each. In those counties in which there is no such company, the board of supervisors shall certify such fact to the comptroller, with their returns, of the aggregate valuation of real and personal estate.

Duty of collector.—Idem § 17. The collector shall demand payment of all taxes assessed on incorporated companies from the president, or other proper officer, of such companies; and, if not paid, shall proceed in the collection and payment thereof in the same manner as in other cases, and shall be liable to the same penalties for the non-payment of moneys collected by him, and the collector's receipt shall be evidence of the payment of such tax.²

Taxes, how paid.—Idem § 18.—Such taxes shall be paid out of the funds of the company, and shall be ratably deducted from the dividends of those stockholders whose stock was taxed or shall be charged upon such stock if no dividends be afterwards declared.³

¹ 48 N. Y. 80; 39 id. 84.

² 3 St. Rep. 551; 54 Super. Ct. 371; 48 N. Y. 81.

³ 36 N. Y. 62; 48 N. Y. 81, 4; 51 Hun, 314; 47 id., 592; 110 N. Y. 254; 104 id. 242; 11 St. Rep., 863; 22 Abb. N. C., 48.

Proceedings if taxes cannot be collected.—Idem. § 19. If the collector shall not be able to collect any tax assessed upon an incorporated company, he shall return the same to the county treasurer, and, at the same time, make affidavit before the county treasurer, or some other officer authorized to administer oaths, that he had demanded payment thereof from the president, or other proper officer of the company, and that such officer had refused to pay the same; or that he had not been able to make such demand, as the case may be, and that such company had no personal property from which he could levy such tax.¹

The same.—Idem. § 21. The county treasurer shall thereupon certify such facts to the comptroller, who shall place to the credit of such county treasurer the amount of all taxes so returned and certified, as in the case of taxes on the lands of non-residents.

Attorney-General to file petition.—Idem § 21. The comptroller shall furnish the attorney-general with the names of all companies and banks refusing or neglecting to pay the taxes imposed on them, with the amount due from them respectively, and the attorney-general shall thereupon file a petition in the supreme court against every such company or bank for the discovery and sequestration of its property (*as amended by Laws of 1857, chap. 456.*)²

Powers of supreme court thereon.—Idem, § 22. The supreme court, on filing of such petition, or on the coming in of the answer thereto, may order such part of the property of such company or bank to be sequestered as shall be deemed necessary for the purpose of satisfying the taxes in arrears, with the costs of prosecution, and the court may also, at its discretion, enjoin such company or bank and the officers thereof from any further proceedings under their charter or act of incorporation, and may order and direct such other proceedings as he shall deem necessary to compel the payment of such taxes and costs. (*As amended by Laws of 1857, chap. 456, §§ 4, 6.*)

Further penalty.—Idem. § 22. The attorney-general may also recover such tax, with costs, from such delinquent company, by action in any court of record in this State.

§ 1081. HIGHWAY TAXES, LAWS OF 1890, CHAPTER 568.

§ 62. *Commutation.*—Every person and corporation shall work the whole number of days for which he or it shall have

¹ 48 N. Y. 81.

² 48 N. Y. 81; 47 Hun, 591.

been assessed, except such days as shall be commuted for, at the rate of one dollar per day, and such commutation money shall be paid to the overseer of highways of the district in which the labor shall be assessed, within at least twenty-four hours before the time when the person or corporation is required to appear and work on the highway; but any corporation may pay its commutation money to the commissioners of highways of the town who shall pay the same to the overseers of the districts respectively, in which the labor commuted for was assessed. See section 33 for assessment on highway labor.

§ 108m. UNPAID TAXES ON VACANT LANDS. LAWS OF 1855, CHAP. 427, AS AMENDED BY LAWS OF 1876, CHAP. 101.

§ 5. *Taxes on lands of residents and railroads returned as unpaid.*—If the taxes on any farm or lot of land assessed to a resident shall be returned as unpaid, in consequence of such premises becoming vacant by the removal of the occupant before the collection of the tax imposed thereon, or in default of goods and chattels of the occupant to satisfy such tax, or if the taxes on any land occupied by or used in connection with any railroad which was assessed to any person, company or corporation, owning, operating, or constructing such railroad, shall be returned as unpaid, the supervisor of the town or ward in which such land was assessed shall add a description thereof to the assessment roll of the next year in the part thereof appropriated to taxes on lands of non-residents, and shall charge the same with the uncollected tax of the preceding year; and the same proceedings shall be had thereon in all respects as if it was the land of a non-resident, and as if such tax had been laid in the year in which the description is so added. The land occupied by or used in connection with any railroad assessed to any person, company or corporation, owning, operating or constructing such railroad, may be described in the following form: "A strip of land owned and occupied by the railroad company, in the year —, extending about — feet on each side of the railroad track, and embracing the same, together with all the depots, stations, turnouts, switches and other improvements thereon, and connected therewith, commencing at a point where such railroad track crosses the boundary line in entering the — ward of the city of —, or the town of —, and extending to the point where such track crosses the boundary line leaving such — ward of the city of —, or the town of —,

or to the point of termination in the same, containing — acres, more or less ;” and when thus described, with the blanks in such form properly filled, on the comptroller’s book of taxes, or advertised or sold for taxes, no other description thereof shall be deemed necessary ; provided if the comptroller shall believe that the interests of the state should best be subserved by selling the lands in lots or divisions, he shall be empowered to direct such surveys or to create such maps as may be made from titles to the same, so as to enable him to sell such lots by description sufficient to convey title thereto.

§ 108n. *Collection of taxes.*—1. R. S. 398, § 2. (1 R. S., 8th ed., vol. 2, ch. 13, tit. 3, § 1, p. 1117) *as amended by Laws of 1892, chap. 196.*

In case any person shall refuse or neglect to pay the tax imposed on him, the collector shall levy the same by distress and sale of the goods and chattels of the person who ought to pay the same, or of any goods and chattels in his possession, wheresoever the same may be found, within the district of the collector ; and no claim of property to be made thereto by any other person shall be available to prevent a sale. If title or possession of property of a person or corporation upon which the tax is imposed, shall have passed to a receiver of such person or corporation appointed by a court, or if the tax be imposed upon such receiver by reason of his ownership or possession of property as such receiver, in either such case property owned by or in the possession of the receiver as such, shall be liable to levy and sale by the collector without application to or permission of such court, in the same manner as property owned by or in the possession of a private person upon whom a tax is imposed.¹

§ 108o. TAXES ON TELEGRAPH LINES — LAWS OF 1886, CHAPTER 659.

SECTION 1. *Place of assessment of telegraph lines, etc.*—The portion of any telegraph, telephone or electric light line in any town or ward in this state shall be assessed in such town or ward to the owner or person or corporation, or association in control thereof, in the manner provided by law for the assessment of lands of resident owners and the same proceedings may be had upon such assessment, and for the collection of any tax levied thereon.

¹ 52 N. Y. 524; 100 N. Y. 403; 40 id. 515; 2 Hun, 416; 29 Hun, 116; 7 Barb. 127; 15 Barb. 595; 4 Barb. 17; 10 Johns R. 404; 4 Wend. 223.

§ 2. "*Lines*" defined.—The word "lines" shall include the interest in the land on which the poles stand, the right of license to erect such poles on land, all poles, arms, insulators, wires and apparatus, instruments, or other thing connected with or used as a part of such line, in such town or ward, and belonging either to the owner of such line, or to the person, corporation or association in control thereof.

§ 3. *Enforcing collection of such tax.*—In enforcing the collection of any tax levied upon such assessment, the instruments and batteries connected with such line may be included among the articles subject to levy and sale, and in case there is not sufficient personal property, together with such instruments and batteries, to pay such tax, and the percentage thereon of the collector, the collector shall return all sums remaining unpaid to the county treasurer, and in the city and county of New York, the receiver of taxes, as other unpaid taxes are returned; and the said county treasurer and receiver of taxes shall proceed to sell such part of the line in the town or ward where the tax was levied, as is necessary to satisfy the unpaid tax and percentage, in the manner now provided by law for the sale of land on execution; and upon such sale shall execute to the purchaser a conveyance of such part of said line, and the purchaser shall thereupon become the owner thereof.

§ 4. *Clerk of board of supervisors to furnish statement to county treasurer.*—It shall be the duty of the clerk of the board of supervisors of the several counties of this state, within five days after making out or issuing of the annual tax warrants, by the board of supervisors of their respective counties, to prepare and deliver to the county treasurer, and in the city and county of New York, the receiver of taxes, a statement showing the title of all telegraph, telephone and electric light lines in such county, as appear in the last assessment roll of the town or ward in such county, the valuation of the property, real and personal, of such town in each town or ward, and the amount of tax assessed or levied on such valuation in each town or ward in the county.

§ 5. *Companies may pay tax to county treasurer, etc.*—Any telegraph, telephone or electric light company assessed, may, within thirty days after the receipt of such notice by the county treasurer or receiver of taxes, pay the amount of tax so assessed or levied on their property, with one per cent fees on the tax, to the county treasurer or receiver of taxes, who is hereby authorized

and directed to receive such amounts, to give a proper receipt therefor, and credit the same to the collector of the town or ward in which the tax was levied. In case the tax on any telegraph telephone, or electric light line remains unpaid at the expiration of the thirty days specified, it shall be the duty of the county treasurer, and receiver of taxes to notify the collector of such town or ward of such failure to pay said tax, and said collector shall proceed to collect such tax in the manner herein provided. The tax may be paid directly to the collector at any time during the life of his warrant, but no collector shall proceed to enforce his warrant, and collect such tax until the receipt of such notice of non-payment from the county treasurer or receiver of taxes.

§ 6. *Same, may pay collector.*—Nothing herein contained shall be construed to prevent the collection of taxes by any proceeding now provided by law.

§ 108p. ASSESSMENT AND COLLECTION OF EXPENSES OF PLACING ELECTRICAL CONDUCTORS UNDERGROUND*—LAWS OF 1884, CHAPTER 499, AS AMENDED BY LAWS OF 1885, CHAPTER 503.

SECTION 7. *Salary of commissioners and expenses to be assessed upon the several companies operating electrical conductors.*—The salary of each of said commissioners, and of every successor of either of them, if appointed for either of such cities having a population of more than one million, shall be five thousand dollars per annum, and if appointed for either of such cities having a population of less than one million, shall be three thousand dollars per annum, payable quarterly by the comptroller of this state, who shall also audit and pay quarterly all necessary and incidental expenses of each of such boards of commissioners. The amount of such salaries and expenses shall, in such proportion as is prescribed in section eight of this act, be by the comptroller assessed upon and collected from the several companies operating electrical conductors in any such city of the state, which, under the provisions of this act, are or shall be required to place and operate any of their conductors underground, and shall be paid into the treasury of the state in such installments as the comptroller shall require.

§ 8. *Companies to furnish to the Comptroller data for apportionment of salaries and expenses.*—It shall be the duty of every such

* See Laws of 1884, chapter 534.

company to furnish the comptroller, from time to time, as, and when requested, all data by him desired to enable him to apportion the relative share to be paid by each such company, of the expenses of said boards, and of the salaries of said commissioners; such apportionment to be by the comptroller made with reference to the number of miles of wires operated within the limits of any such city, and the several companies which are or shall be required, under the provisions of this act, to place and operate any of the conductors under ground, shall be by the comptroller assessed ratably according to the number of miles of such wires, which the comptroller shall certify to be operated by them respectively; and the said commissioners shall furnish the comptroller with a list of such companies. Whenever any such company shall neglect or refuse to furnish such data within twenty days after being so requested by the comptroller, the comptroller is hereby authorized to determine from the best information he shall be able to obtain, and to certify the number of miles of wires so operated.

§ 11. *Upon default of payment of assessments, Comptroller may issue warrants to sheriff directing levy and sale of corporate property; lien of such warrants.*—Whenever any company shall neglect or refuse to pay the assessment made upon such company pursuant to the provisions of this act, within thirty days after being notified by the comptroller of the amount thereof, it shall be lawful for the comptroller to issue his warrant or warrants under his hand and seal of office, directed to the sheriff of any county in this State, commanding him to levy upon and sell the goods and chattels, lands and tenements of the said company found within the said county, for the payment of the amount of said assessment, together with interest thereon and costs of executing such warrant, and to return the said warrant to the comptroller, and pay to the State treasurer the money which shall be collected by virtue thereof, by a certain time therein to be specified, not less than sixty days from the date of such warrant. Such warrant shall be a lien upon, and shall bind the personal estate of the company against which it shall be issued from the time an actual levy shall be made by virtue thereof, and the sheriff to whom such warrant shall be directed, shall proceed upon the same in all respects with the like effect and in the same manner as prescribed by law in respect to executions issued against property upon judgments rendered by a court of record, and shall be entitled to the same

fees and costs for his services in executing the same, to be collected in the same manner.

§ 108q. TITLE OF CORPORATIONS. LAWS OF 1892, CHAP. 686.*

§ 53. *Statement of railroad, telegraph, telephone and electric-light taxes.*—The clerk shall, within five days after the making out, or issuing of the annual tax-warrant by the board of supervisors, prepare and deliver to the county treasurer of his county a statement showing the title of all railroad corporations and telegraph, telephone and electric-light lines in such county, as appear on the last assessment-roll of the towns or cities therein, the valuation of the property, real and personal, of such corporation and line in each town or city, and the amount of tax assessed or levied on such valuation in each town or city in his county.

§ 108r. *Review of assessment by certiorari*, Laws of 1880, chap. 269, § 1. A writ of *certiorari* may be allowed by the supreme court on petition, duly verified, of any person or corporation assessed and claiming to be aggrieved, to review an assessment of real or personal property for the purpose of taxation made in any town, ward, village or city of this State, when the petition shall set forth that the assessment is illegal, specifying the grounds of the alleged illegality, or is erroneous by reason of over valuation, or is unequal in that the assessment has been made at a higher proportionate valuation than other real or personal property on the same roll by the same officers, and that petitioner is or will be injured by such alleged illegal, erroneous or unequal assessment. When the alleged illegality, error or inequality affects several persons in the same manner who are assessed upon the same roll, they may unite in the same petition, and in that case the writ may be allowed, and the proceedings authorized by this act had in behalf of such petitioners.¹

See for proceedings upon such writ, Laws of 1880, chap. 269, § 2-7, 8; as amended by Laws of 1887, chap. 342, § 1; 8-10.

For taxes to discharge municipal aid bonds, see p. 296a, *supra*.

*NOTE.—This is a substitute for Laws 1870, chap. 506, § 1.

¹ 17 Abb. N. C. 369; 13 id. 1; 107 N. Y. 541; 103 id. 640; 23 W. Dig. 568; 18 id. 456; 24 id. 102; 26 id. 529; 9, N. Y. 593; 99 id. 252; 109 id. 579; 115 id. 158; 117 id. 86; 119 id. 558; 38 id. 7; 39 id. 529; 40 id. 176, 598; 46 id. 444; 51 id. 313; 6 St. Rep. 4; 8 id. 709; 5 id. 311; 9 id. 470. The writ may include in its terms a review of both real and personal property, though the relator is assessed for realty only. *People ex rel. Ulster, etc., Ry. Co. v. Smith*, 24 Hun, 66; 54 Hun, 2; 57 Hun, 282, 361; 24 St. Rep. 107; 29 id. 604; 33 id. 600, 601; 58 Hun, 71, 81; 33 St. Rep. 839; 36 id. 223; 105 N. Y. 198; 101 id. 610, 651;

§ 108s. *Application to reduce valuation.*—Laws of 1851, chap. 176, § 5, (as amended by Laws of 1857, chap. 536, § 5.)

§ 5. Whenever any person¹ on his own behalf, or on behalf of those whom he may represent, shall apply to the assessors of any town or ward to reduce the value of his real and personal estate, as set down in the assessment roll, it shall be the duty of such assessors to examine such person under oath touching the value of his or their said real or personal estate; and after such examination, and other supplementary evidence, under oath, or shall be presented by the party or person aggrieved, they shall fix the value thereof at such sum as they may deem just, under the rule prescribed by section * * of this title; but if such person shall refuse to answer any such question as to the value of his real or personal estate or the amount thereof, or present sufficient supplementary evidence under oath, to justify a reduction, the assessors shall not reduce the value of such real or personal estate.* *²

For further proceedings on application to reduce valuation, see Laws of 1851, ch. 176, §§ 6, 7, 8, as amended by Laws of 1884, ch. 57, and Laws of 1885, ch. 201.

§ 108t. TAXABLE TRANSFERS OF PROPERTY,* LAWS OF 1892, CHAP. 399.

§ 1. *Taxable transfers.*—A tax shall be and is hereby imposed upon the transfer of any property, real or personal, of the value of five hundred dollars, or over, or of any interest therein or income therefrom, in trust, or otherwise, to persons or corporations not exempt by law from taxation on real or personal property in the following cases:

1. When the transfer is by will or by the intestate laws of this state from any person dying seized or possessed of the property while a resident of this state.!

** So in original.

*NOTE.—Only so much of this act as is applicable to corporations is given here.

104 id. 377; 106 id. 671; 46 N. Y. 46; 42 Hun, 243; 36 id. 593; 41 id. 139, 307, 344; 45 id. 6, 243, 432; 34 id. 322; 18 Abb. Pr. 246; 2 How. Pr. N. S. 454; 3 id. 211. Under this act, the assessors are required to deliver a completed and verified roll to the town clerk and a writ is properly directed to him to bring up the roll for review. People ex rel. Ulster, etc., Ry. Co. v. Burhans, 25 Hun, 186.

¹ The term "person" or "persons" as used in this act includes corporations Laws 1857, ch. 536, § 3; 6 Hun, 559.

² 6 Lans, 108; 42 Hun, 561; 2 How. Pr. N. S. 455; 47 Barb. 320; 61 id. 284 48 id. 178; 49 N. Y. 247; 32 St. Rep. 608; 117 N. Y. 238

2. When the transfer is by will or intestate law, of property within the state, and the decedent was a non-resident of the state at the time of his death.

3. When the transfer is of property made by a resident or by a non-resident, when such non-resident's property is within this state, by deed, grant, bargain sale or gift made in contemplation of the death of the grantor, vendor or donor, or intended to take effect, in possession or enjoyment, at or after such death. Such tax shall also be imposed when any such person or corporation becomes beneficially entitled, in possession or expectancy, to any property or the income thereof by any such transfer, whether made before or after the passage of this act. Such tax shall be at the rate of five per cent. upon the clear market value of such property, except as otherwise prescribed in the next section.

§ 7. *Deferred payment.*—Any person or corporation beneficially interested in any property chargeable with a tax under this act and executors, administrators and trustees thereof, may elect within one year from the date of the transfer thereof as herein provided not to pay such tax until the person or persons beneficially interested therein shall come into the actual possession or enjoyment thereof. If it be personal property, the person or persons so electing shall give a bond to the state in penalty of three times the amount of any such tax, with such sureties as the surrogate of the proper county may approve, conditioned for the payment of such tax and interest thereon, at such time or period as the person or persons beneficially interested therein may come into the actual possession or enjoyment of such property, which bond shall be filed in the office of the surrogate. Such bond must be executed and filed and a full return of such property upon oath made to the surrogate within one year from the date of transfer thereof as herein provided, and such bond must be renewed every five years.

§ 9. *Liability of certain corporations to tax.*—If a foreign executor, administrator or trustee shall assign or transfer any stock or obligations in this state standing in the name of a decedent, or in trust for a decedent, liable to any such tax, the tax shall be paid to the treasurer of the proper county or the comptroller of the city of New York on the transfer thereof. No safe deposit company, bank or other institution, person or persons holding securities or assets of a decedent, shall deliver or transfer the same to the executors, administrators or legal representatives of said

decedent unless notice of the time and place of such intended transfer be served upon the county treasurer or comptroller at least five days prior to the said transfer. And it shall be lawful for the said county treasurer or comptroller, personally or by representative, to examine said securities or assets at the time of such delivery or transfer. Failure to serve such notice or to allow such examination shall render said safe deposit company, trust company, bank or other institution, person or persons liable to the payment of the tax due upon said securities or assets in pursuance of the provisions of this act.

§ 22. *Definitions*.—The words “estate” and “property” as used in this act shall be taken to mean the property or interest therein of the testator, intestate, grantor, bargainor or vendor, passing or transferred to those not herein specifically exempted from the provisions of this act and not as the property or interest therein passing or transferred to individuals, legatees, devisees, heirs, next-of-kin, grantees, donees or vendees, and shall include all property or interest therein, whether situated within or without this state, over which this state has any jurisdiction for the purposes of taxation. The word “transfer” as used in this act shall be taken to include the passing of property or any interest therein in possession or enjoyment, present or future, by inheritance, descent, devise, bequest, grant, deed, bargain, sale or gift in the manner herein prescribed. The words “county treasurer,” “comptroller” and “district attorney,” as used in this act, shall be taken to mean the treasurer, comptroller or district attorney of the county of the surrogate having jurisdiction, as provided in section ten of this act.

CERTAIN LAWS CONTAINED IN THIS CHAPTER WHICH HAVE BEEN CONSTRUED.

Page 280. Laws of 1867, Chapter 694, as amended by Laws of 1884, chapter 414, and 1885, chapter 340. 125 N. Y., 478; 36 St. Rep., 166.

Page 284. Laws of 1880, Chapter 542, as amended by Laws 1881, chapter 361. 117 N. Y., 143; 244; 121 id., 543; 54 Hun, 598; 134 U. S., 351; 39 St. R., 607, 608, 614, 615, 738; 60 Hun, 228, 229, 230, 232, 233; 38 St. R., 19; 33 id., 29; 34 id., 713, 987; 37 id., 121; 58 id., 248, 271; 126 N. Y., 173; 42 St. R., 60, 273, 275, 281, 401, 633; 44 id., 702, 703, 708; 45 id., 235; 46 id., 228; 47 id., 696, 697, 698.

Page 282. Laws of 1883, Chapter 392, section 1. 119 N. Y., 139; 42 St. Rep., 449; 49 id., 558.

Page 289. Laws of 1885, Chapter 501. 117 N. Y., 143, 244. 54 Hun, 599; 42 St. Rep., 274, 401.

Page 295. Laws of 1886, Chapter 143, section 1. 57 Hun, 487; 42 St. Rep., 90; 44 id., 907.

CHAPTER VI.

RECEIVERS OF CORPORATIONS.

SECTION 109. Receivers must report to attorney-general.

110. Compelling receiver to report.

111. Motion by attorney-general to remove receiver.

112. Notices of motion, etc., to be served upon attorney-general.

113. Application of this act.

114. Apportionment, powers and duties of receivers.

115. Transfer of property to receivers, etc.

116. Dissolution of corporation by legislature; suit by attorney-general.

117. Wages of employees to have preference over other payments by receivers.

118. Appraisal of corporate property in the hands of receivers.

119. Provisions of the Revised Statutes applicable to receivers.

120. Protection against illegal transfers and agreements.

121. Punishment of directors for neglect of duty.

122. Certain laws contained in this chapter which have been construed.

§ 109. RECEIVERS MUST REPORT TO ATTORNEY-GENERAL.
LAWS OF 1880, CHAPTER 537, AS AMENDED BY
LAWS OF 1881, CHAPTER 639.

SECTION 1. All receivers of insolvent corporations who are now required by law to make and file reports of their proceedings, shall hereafter, at the time of making and filing such reports, serve a copy thereof upon the attorney-general of this state.¹

§ 110. COMPELLING RECEIVER TO REPORT. LAWS OF 1880
CHAPTER 537.

SECTION 2. In case any receiver of an insolvent corporation shall neglect to make and file a report of his proceedings for thirty days after the time he is now required by law to make and file such report, or shall neglect for the same length of time to serve a copy thereof on the attorney-general, as required by the first section of this act, the attorney-general may make a motion in the supreme court for an order to compel the making and filing and serving a copy on him of such report, or for the removal of such receiver from his office.²

¹ 25 Hun, 376, 509.

² 25 Hun, 509.

§ 111. MOTION BY ATTORNEY-GENERAL TO REMOVE RECEIVER. LAWS OF 1880, CHAPTER 537, AS AMENDED BY LAWS OF 1882, CHAPTER 331.

SECTION 3. The attorney-general may, at any time he deems that the interests of the stockholders, creditors, policy-holders, depositors or other beneficiaries interested in the proper and speedy distribution of the assets of any insolvent corporation will be subserved thereby, make a motion in the supreme court at a special term thereof, in any judicial district, for an order removing the receiver of any insolvent corporation and appointing a receiver thereof in his stead, or to compel him to account, or for such other or additional order or orders as to him may seem proper to facilitate the closing up of the affairs of such receivership, and any appeal from any order made upon any motion under this section shall be to the general term of said court of the department in which such motion is made.¹

§ 112. NOTICES OF MOTION, ETC., TO BE SERVED UPON ATTORNEY-GENERAL. LAWS OF 1880, CHAPTER 537, AS AMENDED BY LAWS OF 1882, CHAPTER 331.

SECTION 4. A copy of all notices of motion and of all motion papers, and a copy of all other applications to the court, together with a copy of the order or judgment to be proposed thereon to the court, in every action or proceeding now pending for the dissolution of a corporation, or a distribution of its assets, or which shall hereafter be commenced for such purpose, shall in all cases be served on the attorney-general, in the same manner as provided by law for the service of papers on attorneys who have appeared in actions, whether the applications but for this law would be *ex parte* or upon notice, and no order or judgment granted shall vary in any material respect from the relief specified in such copy, order or judgment, unless the attorney-general shall appear on the return day and have been heard in relation thereto; and any order or judgment granted in any action or proceeding aforesaid, without such service of such papers upon the attorney-general, shall be void, and no recovery of any such corporation shall pay to any person any money directed to be paid by any order or judgment made in any such action or proceeding, until the expiration of

¹ 25 Hun, 509.

eight days after a certified copy of such order or judgment shall have been served as aforesaid upon the attorney-general.

§ 113. APPLICATION OF THIS ACT. LAWS OF 1882, CHAPTER 331.

SECTION 3. The provisions of this act shall only apply to actions and special proceedings heretofore instituted by the attorney-general and to such as shall hereafter be instituted by him for the purposes aforesaid.

§ 114. APPOINTMENT, POWERS AND DUTIES OF RECEIVERS. LAWS OF 1883, CHAPTER 378.

SECTION 1. *Application for appointment of receiver, where made.*—Every application hereafter made for the appointment of a receiver of a corporation shall be made at a special term of the court held in and for the judicial district in which the principal business office of the corporation was located at the commencement of the action wherein such receiver is appointed, or in and for a county adjoining such district, and any order appointing a receiver, otherwise made, shall be void.¹

§ 2. *Compensation.*—Every receiver shall be allowed to receive, as compensation for his services as such receiver, five per centum for the first \$100,000 received and paid out, and two and a half per centum on all sums received and paid out in excess of the said \$100,000. But no receiver shall be allowed or shall receive, from such percentages or otherwise, for his said services for any one year, any greater sum or compensation than \$12,000, nor for any period less than one year more than at the rate of \$12,000 per year, provided that where more than one receiver shall be appointed, the compensation shall be divided between such receivers. (*Thus amended, chapter 275, Laws of 1886.*)²

§ 3. *Order appointing receiver to designate place of deposit.*—All orders appointing receivers of corporations shall designate therein one or more places of deposit, wherein all funds of the corporation not needed for immediate disbursement shall be deposited, and no deposits or investments of such trust funds shall be made elsewhere, except upon the order of the court upon due notice given to the attorney-general.³

¹ 35 Hun, 341; 65 How. Pr., 442.

² 65 How. Pr., 442; 31 Hun, 36; 32 id., 78; 39 id., 50; 89 N. Y., 95; 94 id., 587; 93 id., 631; 101 id., 478.

³ 65 How. Pr., 442.

§ 4. *Duties of receiver.*—It shall be the duty of every receiver of an insurance, banking or railroad corporation, or trust company, to present every six months to the special term of the supreme court, held in the judicial district wherein the place of trial or venue of the action or special proceeding in which he was appointed may then be, on the first day of its first sitting, after the expiration of said six months, and to file a copy of the same, if a receiver of a bank or trust company, with the bank superintendent; if a receiver of an insurance company, with the superintendent of insurance, and in each case with the attorney-general, an account exhibiting in detail the receipts of his trust, and the expenses paid and incurred therein during the preceding six months; and it shall be unlawful for any receiver of the character specified in this section to pay to any attorney or counsel any costs, fees or allowance until the amounts thereof shall have been stated to the special term in this manner, as expenses incurred, and shall have been approved by that court by an order of the court duly entered; and any such order shall be the subject of review by the general term and the court of appeals on an appeal taken therefrom by any party aggrieved thereby. Of the intention to present such account, as aforesaid, the attorney-general shall be given eight days' notice in writing, and the attorney-general shall examine the books and accounts of such receiver at least once every twelve months. (*Thus amended by chapter 40, Laws of 1885.*)¹

§ 5. *Intervenor to pay his own legal expenses; no allowance to be made for costs to attorney.*—In case of the intervention of any policy-holder or depositor, by permission of the court, such policy-holder or depositor shall defray the legal expenses thereof, and no allowance shall be made for costs or fees to any attorney of such policy-holder or depositor.

§ 6. *Receiver to close up affairs within one year.*—The affairs of every insolvent corporation now in the hands of any receiver shall be fully closed up by the receiver thereof within one year from the passage of this act, unless the court, upon application by said receiver, and upon due notice to the attorney-general, shall give additional time for that purpose.

§ 7. *Attorney-General may apply to have receiver removed; appeal.*—The attorney-general may, at any time he deems that the

¹ 31 Hun, 622; S. C., 18 W. Dig., 492.

interests of the stockholders, creditors, policy-holders, depositors or other beneficiaries interested in the proper and speedy distribution of the assets of any insolvent corporation will be subserved thereby, make a motion in the supreme court at a special term thereof, in any judicial district, for an order removing the receiver of any insolvent corporation and appointing a receiver thereof in his stead, or to compel him to account, or for such other and additional order or orders as to him may seem proper to facilitate the closing up of the affairs of such receivership, and any appeal from any order made upon any motion under this section shall be to the general term of said court of the department in which such motion is made.

§ 8. *Copies of all papers to be served on Attorney-General.*—A copy of all motions and all motion papers, and a copy of any other application to the court, together with a copy of the order or judgment to be proposed thereon to the court, in every action or proceeding now pending for the dissolution of a corporation or a distribution of its assets, or which shall hereafter be commenced for such purpose, shall, in all cases, be served on the attorney-general, in the same manner as provided by law for the service of papers on attorneys who have appeared in actions, whether the applications but for this law would be *ex parte* or upon notice, and no order or judgment granted shall vary in any material respect from the relief specified in such copy or order, unless the attorney-general shall appear on the return day and have been heard in relation thereto; and any order or judgment granted in any action or proceeding aforesaid, without such service of such papers upon the attorney-general, shall be void, and no receiver of any such corporation shall pay to any person any money directed to be paid by any order or judgment made in any such action or proceeding, until the expiration of eight days after a certified copy of such order or judgment shall have been served as aforesaid upon the attorney-general.¹

§ 9. *Where applications under this act to be made; venue changed.*—All applications to the court contemplated by this act shall be made in the judicial district where the principal office of the insolvent corporation was located; and the venue of all actions or proceedings now pending, not in the judicial district where the principal office of the insolvent corporation was located, are hereby

¹ 38 Hun, 138; 32 id., 171; 40 id., 58; 37 id., 523.

changed and transferred to the county and judicial district where such principal office was located.

§ 10. *Preference on calendar.*—All actions or other legal proceedings and appeals therefrom, or therein brought by or against a receiver of any insolvent corporations referred to in this act, shall have a preference upon the calendars of all courts next in order to actions or proceedings brought by the people of the State of New York.

§ 11. *Repeal.*—All acts or parts of acts inconsistent herewith are hereby repealed.

§ 115. TRANSFER OF PROPERTY TO RECEIVERS, ETC. LAWS OF 1884, CHAPTER 285.

SECTION 1. *Where receivers have been or shall be appointed for any corporation other than insurance companies on application by Attorney-General, property to vest in receiver; proviso.*—In all cases where receivers have been or shall be appointed for any corporation of this State other than an insurance company, on application by the attorney-general, all property, real and personal, and all securities of every kind and nature belonging to such corporation, no matter where located or by whom held, shall be transferred to, vested in and held by such receiver; provided, however, that such transfer shall only be made when directed by an order of the supreme court, due notice of the application for such order having been made on the attorney-general, and the custodian of the funds, securities or property.

§ 416. DISSOLUTION OF CORPORATIONS BY LEGISLATURE; SUIT BY ATTORNEY-GENERAL. LAWS OF 1886, CHAPTER 310.

SECTION 1. *Duty of Attorney-General.*—Whenever any corporation organized under the laws of this State shall be annulled and dissolved by an act of the legislature, it shall be the duty of the attorney-general immediately thereafter to bring a suit to wind up and finally settle and adjust the affairs of such annulled and dissolved corporation.¹

§ 2. *Suit, where to be brought.*—Such suit shall be brought in the supreme court in the name of the people of the State, in any county which the attorney-general may select. The president, or vice-president, or secretary, or treasurer of such dissolved corpo-

¹ 45 Hun. 519; 111 N. Y., 1.

ration, who may have been in office at the time of the dissolution thereof, shall be named, as such officer, as defendant in such suit, and the summons and complaint therein shall be served upon him. If, at the time of such annulment and dissolution there shall not be one of the above designated officers of such corporation, then such suit shall be brought against and the summons and complaint therein served upon any one of the persons who were last acting as directors of such corporation.

§ 3. *Court to appoint receiver.*—It shall be the duty of the special term of the supreme court in the county designated in such summons and complaint, or of any judge of said court who resides in the judicial department in which such county is situated, upon the presentation of a certified copy of the act of the legislature annulling and dissolving a corporation, and of the summons and complaint founded thereon, immediately to appoint a receiver of the assets and property of such dissolved corporation; and the person so appointed shall be both the temporary and permanent receiver thereof, and shall give a bond with sureties, to be approved by said court or such judge thereof, to the people of the State in the penalty of not less than \$10,000, conditioned for the faithful discharge of his duties as such receiver, and for his due accounting for, and paying over all moneys and property which may come to his hands as such receiver. No one of the officers, directors or stockholders of such corporation shall be appointed such receiver thereof.

§ 4. *Receiver to make inventory.*—Such receiver shall, immediately after his appointment and the approval of his bond, cause an inventory of all the property of such dissolved corporation to be taken and filed in the office of the clerk of the county in which such action is pending, and for the purpose of ascertaining the nature, extent and location of such property, the said receiver shall have power to compel the attendance of witnesses, as hereinafter provided, and all evidence taken by or before said receiver in relation to such property shall be filed by him in the office of such county clerk.

§ 5. *Notice to creditors; powers and duties of receiver; creditors to present claims.*—The said receiver shall, immediately after his appointment, publish in two newspapers to be designated by said court, or such judge thereof, daily for one week, and for such longer time, not exceeding one month, as the said court or such judge thereof may by order designate, a notice to all creditors of

such dissolved corporation to present their claims and demands against, and all evidences of indebtedness of such dissolved corporation, to such receiver at a time and place to be designated in such notice. Such receiver is hereby authorized to examine on oath any of such creditors, or claimants, or other witnesses, as to any and all matters pertaining to any claim or demand or evidence of indebtedness so presented. At the expiration of ten days from the date specified in such notice, or within such further time as may be allowed by said court or such judge thereof, the said receiver shall make a list of all the claims presented to or proved before him, in which list he shall specify the amount, origin and true consideration of each claim so presented to or proved before him, and the name of the person in whose behalf the same is presented or proved, and the date when such claimant became the true owner thereof. Such list when so completed shall be verified by such receiver, and shall thereupon be filed, together with such evidence as may have been taken by him, in the office of the said county clerk. The said receiver shall, immediately after such filing, publish a notice daily for fourteen days in two newspapers to be designated by said court, or such judge thereof, stating that such list will be presented to such court, or to a judge thereof, residing in such county, on a day and at a place to be designated in such notice, and the said court or such judge thereof will then and there be asked for an order directing the sale at public auction of all the property specified in such inventory. Any creditor or stockholder may appear and be heard at such time and place. It shall be the duty of said court, or of such judge thereof, to whom such list shall be presented, to examine the same, together with such evidence as the receiver shall have taken, and to reject all claims, demands and evidences of indebtedness which were not legally incurred or created by said corporation, or which were in excess of its powers, or which are for any reason shown to be illegal; and no claim or demand shall be allowed for any greater amount than the money value of the consideration therefor, unless the said court or judge shall find and decide from the evidence taken by and before the receiver, that the person professing to own such claim does in truth own the same by reason of having taken a negotiable instrument or paper before the act dissolving and annulling the corporation alleged to be bound by such instrument or paper, and also before such instrument or paper was by its terms due, and that the same was taken for value paid, and

parted with in good faith before said act of dissolution, and without knowledge or notice of any defect, want or deficiency of previous consideration, or other equity, off-set or defense originally attaching to such instrument or paper, or to the claim or demand upon which the same are founded. Such examination and rejection shall be made by such court or such judge thereof, and not by any referee.¹

§ 6. *When claim of creditor is debarred ; right of creditor to appeal ; sale of property ; allowance to receiver ; distribution of assets.*— All creditors whose claims shall not have been presented as above provided shall be debarred from participating in the avails of the sale of the property described in said inventory. Any creditor whose claim may have been rejected, and who shall have appealed, may apply to said court or such judge thereof for an order that a *pro rata* amount of the avails of such sale which would have appertained to the claim of such creditor, had not the same been rejected, may be retained in court to abide the result of his appeal, and said court, or such judge thereof, shall have discretion to grant the same. Any claimant feeling aggrieved by such rejection may appeal therefrom to the general term and to the court of appeals, in the manner now provided by law for such appeals from orders in civil actions, but neither of such appeals shall stay the proceedings of such receiver or court, or judge thereof, or a sale of such property as herein provided for. The amount of all claims and demands so rejected by said court or such judge shall be deducted from the total amount of claims and demands so filed by the said receiver, and an entry of such rejection shall be made upon said list by said court or such judge, and thereupon the said court or such judge shall by order, reciting the proceedings, direct the immediate sale by said receiver, at public auction, at a time and place and in the manner, and after such notice as may be provided in said order, of all the property in said inventory specified, to such person, firm or corporation as shall bid the highest sum or amount therefor. The receiver shall report to said court, or such judge thereof, the name of the highest bidder, the amount bid, and thereupon the said court or such judge thereof shall by order forthwith direct the said receiver by proper written instrument to convey and transfer all of the property described in said inventory, and

¹ 45 Hun, 519.

offered for sale at said auction, to said highest bidder, who on receiving the same shall pay to the receiver the sum bid. The said court or such judge thereof, shall allow to the receiver two per cent upon the whole inventory for his compensation as such receiver, and also his disbursements, including witness' fees, and the service of subpoenas, and to the attorney-general, and to such other counsel as the receiver may find it necessary to employ, a reasonable counsel fee. The residue of the amount in the hands of the receiver shall be by him distributed among the owners of the claims in said list, which have been allowed subject to the deductions above provided for in case of an appeal, *pro rata*, or in full if such residue shall be sufficient therefor, and the receipts of such owners therefor shall be taken upon such list of claims. The balance of such residue, if any, shall be distributed among the lawful stockholders of such corporation in proportion to their interest therein.¹

§ 7. *Stay of proceedings.*—No issue raised by answer, or demurrer, or otherwise to the complaint hereinbefore provided for, shall stay the proceedings of the receiver, or court, or a judge thereof.

§ 8. *Discharge of receiver ; his powers until discharged.*—The said receiver after such payment may apply to said court, or a judge thereof for his final discharge, and if it shall appear that the said receiver has in all things fulfilled his duty in the premises, the said court or judge shall grant such final discharge, and said receiver, until so discharged, may as such receiver sue for and collect all debts due, and demands owing to such corporation.

§ 9. *Subpoenas, by whom issued ; receiver may administer oaths ; false swearing, perjury.*—It shall be the duty of the clerk of the county in which such suit is brought, to issue, upon the request of the receiver, subpoenas to compel the attendance of witnesses to enable him to ascertain the nature, extent and location of the property of said corporation, and to give evidence concerning any claim which may be presented by any creditor against the estate of such corporation, which subpoenas shall be served in like manner as in civil actions, and the fees of the witness shall be the same as are now established by law in such actions. The receiver shall have full power and authority to administer oaths to all such witnesses and to any creditor of such dissolved corporation, and to

¹ 45 Hun, 519, 543.

examine them concerning the property of such dissolved corporation, and as to the claims presented against it. Disobedience to such subpoenas shall be a contempt of court, and shall be punished in like manner as other contempts of court are now punishable. Willful false swearing by any witness or creditor in any such examination shall be deemed perjury, and shall be punishable as such in like manner as if committed by a witness on a trial of a civil action.

§ 10. *Leave to sue receiver, how and where obtainable.*—All applications for leave to sue such receiver and all applications for injunctions to restrain his proceedings, shall be made only to the supreme court in the county in which such action was brought, and shall not be made to any other court, or to the supreme court in any other county, and shall not be granted except upon eight days' notice to the attorney-general of the time and place of making such application. In any action hereafter brought or now pending by the attorney-general, to close up, determine or settle the affairs of any corporation dissolved by legislative enactment, the judgment or determination of the supreme court at general term may be reviewed upon appeal to the court of appeals, as now provided by law, whether the judgment rendered in the case be interlocutory or final. (*Thus amended, chapter 601, Laws of 1887.*)¹

§ 11. *Repeal, etc*—This act shall take effect immediately, and all acts and parts of acts inconsistent therewith are hereby repealed.

§ 117. WAGES OF EMPLOYEES TO HAVE PREFERENCE OVER
OTHER PAYMENTS BY RECEIVERS. LAWS OF 1885,
CHAPTER 376.

SECTION 1. Where a receiver of a corporation created or organized under the laws of this State and doing business therein, other than insurance and moneyed corporations, shall be appointed, the wages of the employees, operatives and laborers thereof shall be preferred to every other debt or claim against such corporation, and shall be paid by the receiver from the moneys of such corporation which shall first come into his hands.

¹ 45 Hun, 519.

§ 118. APPRAISAL OF CORPORATE PROPERTY IN THE HANDS OF RECEIVERS. LAWS OF 1891, CHAPTER 34.

SECTION 1. Whenever by reasons of the provisions of any law of this State it shall become necessary to appraise in whole or in part the estate of any deceased person, or of any insolvent estate in the hands of a receiver, or of any assignee for the benefit of creditors, or of any corporation in the hands of a receiver, or otherwise, the persons whose duty it shall be to make such appraisal shall value the real estate at its full and true value, taking into consideration the actual sales of neighboring real estate similarly situated during the year immediately preceding the date of such appraisal, if any; and they shall value all such property, stocks, bonds, or securities as are customarily bought or sold in open markets in the city of New York or elsewhere, for the day on which such appraisal or report may be required, by ascertaining the range of the market and the average of prices as thus found, running through a reasonable period of time.

§ 119. PROVISIONS OF THE REVISED STATUTES APPLICABLE TO RECEIVERS. 2 R. S., 464 (PART 3, CH. 8, TIT. 4, ART. 2, 8TH ED., VOL. IV, P. 2681), AS AMENDED BY LAWS OF 1858, CH. 348.

§ 42.* *Receiver's general powers and duties.*—Such receiver shall possess all the powers and authority conferred, and be subject to all the obligations and duties imposed, in article third of this title, upon receivers appointed in case of the voluntary dissolution of a corporation (see next section). It shall be his duty to keep an account of all moneys received by him, and on the first days of January, April, July and October, in each and every year, to make and file a written statement, verified by his oath, that such statement is correct and true, showing the amount of money received by such receiver, his agent or attorneys, the amount he has a right to retain under the provisions of this title, and the items for which he claims to retain the same, and the distributive share due each person interested therein. He shall pay such distributive share to the person or persons entitled thereto on demand, at any time after such statement. Such accounts, statements and all the books and papers of the corporation, in

* NOTE.—By Laws of 1880, ch. 245, this section of the Revised Statutes is made applicable to a receiver appointed under section 1788 of the the Code of Civil Procedure.

the hands of such receiver shall, at all reasonable times, be open for the inspection of all persons having an interest therein. And in case of neglect or refusal to comply with either of the above requirements, or any duty imposed upon him by this title, the supreme court at either a general or special term, shall, on the application of the party aggrieved, unless such neglect or refusal shall be satisfactorily explained to the court, forthwith remove such receiver, and appoint some suitable person as receiver in his place. Such removal shall not vitiate or annul any legal proceedings had by such receiver; but such proceedings shall be continued by such successor, as if no such removal had been made. Such receivers shall also be liable to pay to the party interested, interest at the rate of ten per cent per annum on all moneys due to such party, and retained by him more than one day after such demand made as aforesaid.¹

§ 66†. *Receivers; security.*—Any of the directors, trustees or other officers of such corporation, or any of its stockholders, may be appointed receivers, who, before entering upon the duties of their appointment, shall give such security to the people of this state, and in such penalty, as the court shall direct, conditioned for the faithful discharge of the duties of their appointment, and for the due accounting for all moneys received by them.²

§ 67. *Rights of receivers.*—Such receivers shall be vested with all the estate, real and personal, of such corporation, from the time of their having filed the security hereinbefore required, and shall be trustees of such estate for the benefit of the creditors of such corporation and of its stockholders.³

§ 68. *Their authority.*—Such receivers shall have all the power and authority conferred by law upon trustees to whom an assignment of the estate of insolvent debtors may be made, pursuant

† Sections 66 to 89, both inclusive, of the Revised Statutes, are by Laws of 1880, ch. 245, made applicable to a receiver appointed pursuant to section 2429 of the Code of Civil Procedure.

¹ 5 Civ. Pro. R. (Browne), 132; 25 Hun, 376, 512; 124 id., 338; 3 id., 415; 45 id., 315; 1 id., 332; 23 Barb., 656; 1 id., 148; 6 Paige, 217, 226, 503; 4 id., 225, 387; 2 id., 438, 452; 2 Sandf. Ch., 257; 33 Barb., 610; 5 N. Y., 320; 1 Barb. Ch., 122; 65 How. Pr., 442, 446.

² 16 How. Pr., 57.

³ 1 N. Y., 332; 26 Barb., 59, 311; 23 id., 656; 1 id., 148; 3 Wend., 13; 22 How. Pr. R., 283; 73 N. Y., 571; 55 Barb., 217; 101 N. Y., 484; 6 Paige, 503; 57 Hun, 445; 124 N. Y., 338.

to the provisions of the fifth chapter of the second part of the Revised Statutes.¹

§ 69. *To prosecute for arrears of stock.*—If there shall be any sum remaining due upon any share of stock subscribed in such corporation, the receivers shall immediately proceed and recover the same, unless the person so indebted shall be wholly insolvent; and for that purpose may file their bill in the court of chancery, or may commence and prosecute an action at law, for the recovery of such sum, without the consent of any creditors of such corporation.²

§ 70. *To give notice of appointment, etc.*—The receivers, immediately on their appointment, shall give notice thereof, which shall contain the same matters required by law in notices of trustees of insolvent debtors; and in addition thereto, shall require all persons holding any open or subsisting contract of such corporation, to present the same in writing and in detail to such receivers, at the time and place in such notice specified; which shall be published for three weeks in the State paper and in a newspaper printed in the county where the principal place of conducting the business of such corporation shall have been situated.³

§ 71. *Certain sales, etc., void.*—All sales, assignments, transfers, mortgages and conveyances of any part of the estate, real or personal, including things in action, of every such corporation, made after the filing of the petition for a dissolution thereof, in payment of, or as a security for, any existing or prior debt, or for any other consideration, and all judgments confessed by such corporation after that time, shall be absolutely void as against the receivers, who may be appointed on such petition, and as against the creditors of such corporation.⁴

§ 72. *Debtors to account to receivers.*—After the first publication of the notice of the appointment of receivers, every person having possession of any property belonging to such corporation, and

¹ 36 N. Y., 350; 6 Bosw., 638; 55 Barb., 219; 4 T. & C., 622; 5 Robt., 362; 1 N. Y., 332; 23 Barb., 656; 1 Abb., 562; 6 Paige, 503; 37 Barb., 228; 24 How. Pr. R., 487; 78 N. Y., 267; 81 id., 242; 4 Paige, 225; 26 Barb., 59, 311; 22 How. Pr., 283; 124 N. Y., 338.

² 25 Barb., 109; 21 id., 605; 12 id., 672; 2 id., 298; 1 Barb. Ch., 124; 23 Barb., 656; 6 Bosw., 638; 92 N. Y., 7; rev'g 28 Hun, 375; 23 Barb., 656.

³ 36 N. Y., 350; 5 Robt., 362; 6 Bosw., 638; 1 Barb., 148; 4 Paige, 225; 57 Hun, 443, 444.

⁴ 11 N. Y., 240; 26 Barb., 59; 8 Paige, 382; 1 Duer, 129; 24 How. Pr., 438; 55 N. Y., 18, 21; 6 Bosw., 638; 5 Robt., 362; 105 N. Y., 340.

every person indebted to such corporation, shall account and answer for the amount of such debt and for the value of such property to the said receivers; and all the provisions of law, in respect to trustees of insolvent debtors, the collection and preservation of the property of such debtors, the concealment and discovery thereof; and the means of enforcing such discovery, shall be applicable to the receivers so appointed, and to the property of such corporation.¹

§ 73. *Referring controversies.*—Such receivers shall have the same power to settle any controversy that shall arise between them and any debtors or creditors of such corporation, by a reference, as is given by law to trustees of insolvent debtors; and the same proceedings for that purpose shall be had, and with the like effect; and application for the appointment of referees may be made to any officer authorized to appoint such referees on the application of trustees of insolvent debtors, who shall proceed therein in the same manner; and the referee shall proceed in like manner, and file their report with like effect in all respects.²

§ 74. *Meetings of creditors to be called, etc.*—The receivers shall be subject to all the duties and obligations by law imposed on trustees of insolvent debtors, so far as they may be applicable, except where other provisions shall be herein made. They shall call a general meeting of the creditors of such corporation, within four months from the time of their appointment, when all accounts and demands for and against such corporation, and all its open and subsisting contracts, shall be ascertained and adjusted as far as may be, and the amount of moneys in the hands of the receivers declared.³

§ 75. *Subsisting contracts.*—If there shall be any open and subsisting engagements or contracts of such corporation, which are in the nature of insurances or contingent engagements of any kind, the receivers may, with the consent of the party holding such engagement, cancel and discharge the same, by refunding to such party the premium or consideration paid thereon by such corporation, or so much thereof as shall be in the same proportion to the

¹ 1 N. Y., 332; 1 Barb., 148; 6 Paige, 226; 4 id., 225; 36 N. Y., 350; 6 Bosw., 638; 5 Robt., 362; 57 Hun, 443, 444.

² 18 N. Y., 213; 24 How. Pr., 487; 6 Bosw., 638; 42 N. Y., 155; 81 id., 242.

³ 37 Barb., 228; 5 Robt., 362; 6 Bosw., 638; 36 N. Y., 350; 82 N. Y., 287.

time which shall remain of any risk assumed by such engagement, as the whole premium bore to the whole term of such risk; and upon such amount being paid by such receivers to the person holding or being the legal owner of such engagement, it shall be deemed cancelled and discharged as against such receivers.¹

§ 76. *Receivers' commissions.*—Such receivers shall, in addition to their actual disbursements, be entitled to such commissions as the court shall allow, not exceeding the sum allowed by law to executors or administrators.²

§ 77. *To retain certain moneys.*—The receivers shall retain, out of the moneys in their hands, a sufficient amount to pay the sums which they are hereinbefore authorized to pay, for the purpose of cancelling and discharging any open or subsisting engagements.

§ 78. *Id.; to meet suits.*—If any suit be pending against the corporation or against the receivers, for any demand, the receivers may obtain the proportion which would belong to such demand if established, and the necessary costs and proceedings, in their hands, to be applied according to the event of such suit, or to be distributed in a second or other dividend.³

§ 79. *Order of payment of debts.*—The receivers shall distribute the residue of the moneys in their hands, among all those who shall have exhibited their claims as creditors, and whose debts shall have been ascertained, as follows:

1. All debts entitled to a preference under the laws of the United States:

2. Judgments actually obtained against such corporation, to the extent of the value of the real estate on which they shall respectively be liens:

3. All other creditors of such corporation, in proportion to their respective demands, without giving any preference to debts due on specialties.⁴

§ 80. *Second and final dividend.*—If the whole of the estate of such corporation be not distributed on the first dividend, the re-

¹ 3 Barb. Ch., 642; 2 Edw. Ch., 672; 78 N. Y., 114; 79 N. Y., 267.

² See Code of Civ. Pro., § 3320; 12 Barb., 672; 6 Paige, 217; 39 Hun, 51; 65 How. Pr., 442-446.

³ 36 Barb., 331.

⁴ 26 Barb., 59; 8 Paige, 380; 3 Edw. Ch., 387; 3 Abb. Ct. App. Dec., 242; 15 Abb. N. C., 196; S. C., 3 Dem., 299; 36 Barb., 331; 92 N. Y., 7 rev'g 28 Hun, 375; 42 id., 619.

ceivers shall, within one year thereafter, and within sixteen months after their appointment, make a second dividend of all the moneys in their hands, among the creditors entitled thereto; of which, and that the same will be a final dividend, three weeks' notice shall be inserted once in each week, in the State paper, and in a newspaper printed in the county where the principal place of business of such corporation was situated.

§ 81. *Proceedings therein.*—Such second dividend shall be made in all respects in the same manner as herein prescribed in relation to the first dividend, and no other shall be made thereafter among the creditors of such corporation, except to the creditors having suits against it, or against the receivers, pending at the time of such second dividend, and except of the moneys which may be retained to pay such creditors, as herein provided; but every creditor who shall have neglected to exhibit his demand before the first dividend, and who shall deliver his account to the receivers before such second dividend, shall receive the sum he would have been entitled to on the first dividend, before any distribution be made to the other creditors.¹

§ 82. *Debts not exhibited.*—After such second dividend shall have been made, the receivers shall not be answerable to any creditor of such corporation, or to any person having claims against such corporation, by virtue of any open or subsisting engagement, unless the demands of such creditor shall have been exhibited, and the engagements upon which such claims are founded, shall have been presented to the said receivers, in detail and in writing, before or at the time specified by them in their notice of a second dividend. .

§ 83. *Surplus to stockholders.*—If after the second dividend is made, there shall remain any surplus in the hands of the receivers, they shall distribute the same among the stockholders of such corporation, in proportion to the respective amounts paid in by them, severally, on their shares of stock.²

§ 84. *Money retained.*—When any suit pending at the time of the second dividend, shall be terminated, they shall apply the money retained in their hands for that purpose, to the payment of the amount recovered, and their necessary charges and expenses; and if nothing shall have been recovered, they shall dis-

¹ 45 N. Y., 315.

² 6 Paige, 503; 45 N. Y., 316.

tribute such moneys, after deducting their expenses and costs, among the creditors and stockholders of the corporation, in the same manner as herein directed in respect to a second dividend.

§ 85. *Control of Receivers, etc.*—The receivers shall be subject to the control of the court of chancery, and may be compelled to account at any time; they may be removed by the court, and any vacancy created by such removal, by death or otherwise, may be supplied by the court.¹

§ 86. *Account by them.*—Within three months after the time herein prescribed for making a second dividend, the receivers, shall render a full and accurate account of all their proceedings to the court of chancery, on oath, which shall be referred to a master to examine and report thereon.

§ 87. *Previous notice thereof.*—Previous to rendering such account the receivers shall insert a notice of their intention to present the same, once in each week, for three weeks, in the State paper, and in a newspaper of the county in which notices of dividends are herein required to be inserted, specifying the time and place at which such account will be rendered.

§ 88. *Master's duty.*—The master to whom such account shall be referred, shall hear and examine the proofs, vouchers and documents offered for or against such account, and shall report thereon fully to the court.

§ 89. *Settlement of account, its effect.*—Upon the coming in of such report, the court shall hear the allegations of all concerned therein, and shall allow or disallow such account, and decree the same to be final and conclusive upon all the creditors of such corporation, upon all persons who have claims against it, upon any open or subsisting engagement, and upon all the stockholders of such corporation. Such receivers shall also account, from time to time, in the same manner, and with the like effect, for all moneys which shall come to their hands after the rendering of such account, and for all moneys which shall have been retained by them for any of the purposes hereinbefore specified, and shall pay into court all unclaimed dividends.

¹ 6 Paige, 226.

§ 120. PROTECTION AGAINST ILLEGAL TRANSFERS AND AGREEMENTS. LAWS OF 1858,* CHAPTER 314.

SECTION 1. *Powers of receivers extended for protection against fraud.*—That any executor, administrator, receiver, assignee, or other trustee of an estate, or the property and effects of an insolvent estate, corporation, association, partnership or individual, may for the benefit of creditors or others interested in the estate or property so held in trust, disaffirm, treat as void, and resist all acts done, transfers and agreements made, in fraud of the rights of any creditor, including themselves and others, interested in any estate or property held by or of right belonging to any such trustee or estate.¹

§ 2. *May have action against offenders.*—That every person who shall, in fraud of the rights of creditors or others, have received, taken, or in any manner, interfered with, the estate, property or effects of any deceased person, or insolvent corporation, association, partnership or individual, shall be liable in the proper action to the executors, administrators, receivers, or other trustees of such estate or property, for the same, or the value of any property or effects so received or taken, and for all damages caused by such acts to any such trust estate.²

§ 121. PUNISHMENT OF DIRECTORS FOR NEGLECT OF DUTY. LAWS OF 1870, CHAPTER 151.

§ 4. *Officers of company punished for concealing notices for injunction or receiver.*—Any director or other officer of a corporation or joint stock association, upon whom shall be served any notice of any application for an injunction restraining or affecting the business of such corporation or joint stock association, or for a receiver of its property and effects, or any part thereof, who shall conceal from or omit to disclose to the other directors, trustees, managers and officers thereof the fact of such service, and the time and place at which such application is to be made, shall

* Amended Laws of 1889, chapter 487, section 1; but amendment does not relate to corporations.

¹ 26 Hun, 288, 353; 29 id., 146, 151; 28 id., 411; 27 id., 508, 511; 1 City Ct., 247, 249; 48 St. Rep., 715; 10 Daly, 66, 67; 54 Hun, 347; 32 St. Rep., 639; 124 N. Y., 251, 253; 127 id., 61, 552; 128 id., 9; 60 Hun, 199, 201, 264, 265, 267; 37 St. Rep., 330, 854, 856; 36 id., 805; 38 id., 225; 44 id., 329; 43 id., 253; 42 id., 534, 871; 47 id., 434.

² 7 N. Y. (3 Seld.), 328.

be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by fine or imprisonment, or both such fine and imprisonment, and shall be liable, in a civil action, to the corporation or joint stock association for all damages which shall be sustained by it by reason of such proceedings.¹

§ 5. *To whom this act applies.*—The provisions of this act shall extend and apply to all corporations and joint stock associations, created or existing by the laws of this or of any other State or government doing business within this State, or having a business or fiscal agency, or an agency for the transfer of its stock therein, and to the directors, trustees, managers and others officers of such foreign corporations or joint stock associations, and to all proceedings by the attorney-general, in the name of the people of this State, under the laws regulating proceedings against corporations, except that it shall not apply to savings banks or to corporations or associations having banking powers or power to make insurances, or to such as shall be organized under the general manufacturing laws of this State. As amended by Laws 1875, chapter 428.

CERTAIN LAWS CONTAINED IN THIS CHAPTER WHICH HAVE
BEEN CONSTRUED.

Page 299, Laws of 1883, Chapter 378.—57 Hun, 442, 448; 29 St. Rep., 199; 37 id., 617; 39 id., 168; 44 id., 514; 45 id., 328.

Page 307, Laws of 1885, Chapter 376.—25 Abb. N. C., 388, note 384*n.*; 60 Hun, 43; 38 St. Rep., 566.

¹ 48 St. Rep., 171.

CHAPTER VII.

THE CODE OF CIVIL PROCEDURE.

PROVISIONS APPLICABLE TO CORPORATIONS.

I. ACTIONS BY A CORPORATION AND AGAINST A CORPORATION TO RECOVER DAMAGES OR PROPERTY.

SECTION:	PAGE
1775. Complaint in actions by or against corporations.....	320
1776. When proof of corporate existence unnecessary	320
1777. Misnomer, when waived.....	320
1778. Action against a corporation on a note, etc.....	321
1779. When foreign corporation may sue	321
1780. When foreign corporation may be sued	321

II. JUDICIAL SUPERVISION OF A CORPORATION, AND THE OFFICERS AND MEMBERS THEREOF.

1781. Actions against directors, etc., of a corporation for misconduct.	322
1782. By whom actions to be brought.....	322
1783. This article, how construed.....	323
2469. Receiver of personal property.....	323
3320. Receiver's commission.....	323

III. ACTIONS TO PROCURE THE DISSOLUTION OF A CORPORATION, AND ACTIONS TO ENFORCE THE INDIVIDUAL LIABILITY OF THE OFFICERS OR MEMBERS OF A CORPORATION WITH OR WITHOUT A DISSOLUTION THEREOF.

1784. Action by a judgment creditor for sequestration, etc.....	323
1785. Action to dissolve a corporation.....	324
1786. Id.; by whom to be brought.....	324
1787. Temporary injunction.....	325
1788. Receiver may be appointed, permanent and temporary receiver, powers, etc., of temporary receiver... ..	325
1789. Additional powers and duties may be conferred on temporary receivers	326
1790. Making stockholders, etc., parties.....	326
1791. When separate action may be brought against them.....	326
1792. Proceedings in either action.....	327
1793. Judgment; property of corporation to be distributed.	327
1794. Id.; stock subscriptions to be recorded.	327
1795. Id.; as to liabilities of directors and stockholders.....	327
1796. Effect of this article limited.....	327

IV. ACTION BY THE PEOPLE TO ANNUL A CORPORATION.

1797. Action by the attorney-general when legislature directs.....	328
1798. Id, by leave of court.....	328
1799. Leave, when and how granted.....	329

SECTION:	PAGE
1800. Action triable by a jury	329
1801. Judgment	329
1802. Injunction may issue.	329
1803. Copy of judgment roll to be filed and published ...	330

V. PROVISIONS APPLICABLE TO TWO OR MORE OF THE ACTIONS SPECIFIED
IN THIS TITLE.

1804. Certain corporations excepted from certain articles of this title.	330
1805. Officers and agents may be compelled to testify.....	330
1806. Injunctions staying actions by creditors	330
1807. Creditors may be brought in.....	331
1808. When attorney general must bring action.....	331
1809. Requisites of injunction against corporations in certain cases...	332
1810. Id.; of order appointing receiver in certain cases..	332
1811. Id.; of judicial suspension or removal of an officer.....	333
1812. Application of the last three sections.	333
1813. In action against stockholders, misnomer, etc., not available ...	333

VI. PROCEEDINGS FOR THE VOLUNTARY DISSOLUTION OF A CORPORATION.

2419. When majority of directors, etc., may petition for dissolution..	334
2420. Id.; when they are equally divided.....	334
2421. Contents of petition.....	334
2422. Affidavits to be annexed ..	335
2423. Presentation of petition, etc., order to show cause.....	335
2424. Order to be published.....	336
2425. Id.; to be served on creditors and stockholders	337
2426. Hearing	337
2427. Id.; original papers may be used. .	337
2428. Application for final order.....	337
2429. Final order	338
2430. Certain sales, etc., void...	338
2431. Certain corporations excepted from this title...	338

VII. MISCELLANEOUS PROVISIONS OF THE CODE OF CIVIL PROCEDURE
REGULATING THE CONDUCT OF ACTIONS AGAINST A CORPORATION.

431. Subd. 3, personal service of a summons on a domestic corporation, how made.....	339
432. Id.; upon a foreign corporation.....	339
433. Cases in which the service of a summons by publication, etc., may be ordered.....	340
2865. Actions by and against officers, etc., and by executors, etc.....	341
2879. Service of summons in a justice's court upon the company....	341
2880. Id.; special provisions in regard to railroad corporations. .	341
2881. Id.; relating to express companies.....	341
525. Subd. 1, verification of pleading, how and by whom made....	342
610. Service of injunction upon the corporation	342
624. Damages sustained when officer of corporation is enjoined....	342
636. Grounds of issuing warrant of attachment against the corporation.....	343

SECTION:	PAGE
646. Attachment of unpaid subscription to foreign corporation.....	343
647. Id.; of interest in corporations.....	343
650. Certificate of defendant's interest to be furnished.....	344
651. Persons refusing certificate may be examined.....	344
707. When judgment enforced only against attached property.....	344
791. Subd. 8, preferred causes on trial.....	345
839. Admission by member of corporation.....	345
868. Books of corporation, how produced.....	345
869. When personal attendance not required by subpoena duces tecum.....	345
929. Books of foreign corporation, when evidence.....	346
930. When a copy thereof is evidence.....	346
931. How copy to be verified.....	346
1012. References, how made of actions against the corporations.....	346
1217. Judgment by default against foreign corporation, how taken...	347
393. No limitation of action on bank notes, etc.....	347
394. Action against directors, etc., of banks.....	347
872. Subds. 1, 7. Deposition, application; contents of affidavit.....	347
341. Jurisdiction of county courts, domestic corporations, etc., when deemed resident, etc.....	348
525. Verification; how and by whom made.....	348
960. Public or corporate seal may be stamped.....	349
1650. Action to compel the determination of a claim to real property. This article applies to corporations, or receivers.....	349
1879. Judgment creditors' action. Application of this article; what property cannot be reached.....	349
945. Record of bill of sale, etc., of vessels.....	350
1948. Actions against the usurper of an office or franchise. Attorney- general may maintain action.....	350
1950. Action triable by jury.....	350
1951. Assumption of office by person entitled.....	350
1952. Proceedings to obtain books and papers.....	351
1953. Damages, how recovered.....	351
1954. One action against several persons.....	351
1955. When injunction may be granted.....	351
1956. Final judgment in action for usurping office.....	352
1983. Scire facias, quo warranto, etc., abolished.....	352
1984. Actions to be brought in the name of the people.....	352
1987. Costs; how collected against corporation and usurpers of fran- chise.....	352
2146. Certiorari; "body," or "officer;" "determination;" what they include.....	352
3268. Subd. 2. When defendant may require security for costs.....	353
3269. Subd. 1. Id.; after action commenced.....	353
2463. Supplemental proceedings; cases where the chapter is not appli- cable; what property cannot be reached.....	353
2526. Citation, service upon a corporation, infant, lunatic, etc.....	353
3343. Miscellaneous general definitions and rules of construction.....	354

ACTIONS BY A CORPORATION AND AGAINST A CORPORATION
* TO RECOVER DAMAGES OR PROPERTY.

§ 1775. *Complaint in actions by or against corporation.*—In an action brought by or against a corporation, the complaint must aver that the plaintiff, or the defendant, as the case may be, is a corporation; must state whether it is a domestic corporation or a foreign corporation; and, if the latter, the state, country or government, by or under whose laws it was created. But the plaintiff need not set forth, or specially refer to, any act or proceeding by or under which the corporation was created.¹

§ 1776. *When proof of corporate existence unnecessary.*—In an action, brought by or against a corporation, the plaintiff need not prove, upon the trial, the existence of the corporation, unless the answer is verified, and contains an affirmative allegation that the plaintiff, or the defendant, as the case may be, is not a corporation.²

§ 1777. *Misnomer, when waived.*—In an action or special proceeding, brought by or against a corporation, the defendant is deemed to have waived any mistake in the statement of the corporate name, unless the misnomer is pleaded in the answer, or other pleading in the defendant's behalf.

§ 1778. *Action against a corporation on a note, etc.*—In an action against a foreign or domestic corporation, to recover damages for the non-payment of a promissory note, or other evidence of debt, for the absolute payment of money, upon demand, or at a particular time, an order, extending the time to answer or demur, shall not be granted, except by the court, upon notice to the plaintiff's attorney. In such an action, unless the defendant serves, with a copy of his answer or demurrer, a copy of an order of a judge, directing that the issues presented by the pleadings be tried, the plaintiff may take judgment, as in case of default in pleading, at the expiration of twenty days after service of a copy of the complaint, either personally with the summons, or upon the defendant's attorney, pursuant to his demand therefor; or, if the service

¹ 19 Civ. Pro. R., 385; 20 id., 152; 35 St. Rep., 518; 38 id., 870; 59 Hun, 127; 28 Barb., 59; 41 id., 571; 16 How. Pr., 97; 44 St. Rep., 300; 5 Civ. Pro., 116; 8 id., 401; 10 id., 176; 11 id., 61; 15 id., 250; 19 id., 53; 21 Abb. N. C., 146; 13 Daly, 509; 3 How. Pr. N. S., 123; 1 St. Rep., 617; 2 id., 612; 9 id., 46; 14 id., 427; 17 id., 381, 389; 23 id., 462; 30 id., 643.

² 14 St. Rep., 427; 93 N. Y., 474; 99 id., 12; 3 Civ. Pro., 263; 4 id., 260; 13 id., 122; 19 Hun, 62; 45 St. Rep., 636; 34 id., 123; 58 Hun, 162; 14 Barb., 182; 6 Daly, 426; 7 id., 399.

of the summons was otherwise than personal, at the expiration of twenty days after the service is complete.¹

§ 1779. *When foreign corporation may sue.*—An action may be maintained by a foreign corporation, in like manner, and subject to the same regulations, as where the action is brought by a domestic corporation, except as otherwise specially prescribed by law. But a foreign corporation cannot maintain an action founded upon an act, or upon a liability or obligation, express or implied, arising out of, or made and entered into in consideration of, an act, which the laws of the state forbid a corporation or association of individuals to do, without express authority of law. This section does not affect the validity of a meeting of the stockholders or directors of a foreign corporation, held within the state, where such a meeting is authorized by the laws of the state, country or government, by or under which the corporation is created; or of an act, done at a regular meeting, which is not in conflict with the same laws, or the laws of the state.²

§ 1780. *When foreign corporation may be sued.*—An action against a foreign corporation may be maintained by a resident of the state, or by a domestic corporation, for any cause of action. An action against a foreign corporation may be maintained by another foreign corporation, or by a non-resident, in one of the following cases only:

1. Where the action is brought to recover damages for the breach of a contract, made within the state, or relating to property situated within the state at the time of the making thereof.

2. Where it is brought to recover real property situated within the state, or a chattel, which is replevied within the state.

3. Where the cause of action arose within the state, except where the object of the action is to affect the title to real property situated without the state.³

¹ 2 Civ. Pro., 50, 393; 5 id., 274; 7 id., 5; 17 id., 181; 24 St. Rep., 868; 28 id., 294; 29 id., 786; 12 Abb. N. C., 278; 18 id., 476; 64 How. Pr., 268; 88 N. Y., 424; 101 id., 430; 119 id., 433; 38 Hun, 122; 53 id., 88; 54 id., 451; 2 Wend., 280; 19 id., 10; 14 Abb. Pr., 119. 25 Wend., 648.

² 34 St. Rep., 124; 58 Hun, 163; 7 Civ. Pro. R., 5; 46 St. Rep., 275.

³ 16 St. Rep., 871; 20 id., 741; 30 id., 681; 87 N. Y., 147; 112 id., 315; 121 id., 152; 3 Civ. Pro., 36; 5 id., 113; 7 id., 5, 222; 15 id., 88; 16 id., 255; 18 id., 403; 28 Hun, 269; 32 id., 190; 35 id., 390, 393; 49 Supr. Ct., 234; 50 id., 281; 56 id., 110; 11 Abb. N. C., 183; 18 id., 481; 20 Civ. Pro. R., 107, 154, 179; 85

II. JUDICIAL SUPERVISION OF A CORPORATION, AND OF THE OFFICERS AND MEMBERS THEREOF.

§ 1781. *Action against directors, etc., of a corporation, for misconduct.*—An action may be maintained against one or more trustees, directors, managers, or other officers of a corporation, to procure a judgment for the following purposes, or so much thereof as the case requires:

1. Compelling the defendants to account for their official conduct, in the management and disposition of the funds and property committed to their charge.

2. Compelling them to pay to the corporation, which they represent, or to its creditors, any money, and the value of any property, which they have acquired to themselves, or transferred to others, or lost, or wasted, by a violation of their duties.

3. Suspending a defendant from exercising his office, where it appears that he has abused his trust.

4. Removing a defendant from his office, upon proof or conviction of misconduct, and directing a new election to be held by the body or board, duly authorized to hold the same, in order to supply the vacancy created by the removal; or, where there is no such body or board, or where all the members thereof are removed, directing the removal to be reported to the governor, who may, with the advice and consent of the senate, fill the vacancies.

5. Setting aside an alienation of property, made by one or more trustees, directors, managers, or other officers of a corporation, contrary to a provision of law, or for a purpose foreign to the lawful business and objects of the corporation, where the alienee knew the purpose of the alienation.

6. Restraining and preventing such an alienation, where it is threatened, or where there is good reason to apprehend that it will be made.¹

§ 1782. *By whom action to be brought.*—An action may be brought, as prescribed in the last section, by the attorney-general in behalf of the people of the State; or, except where the action is brought for the purpose specified in subdivision third or fourth

St. Rep., 402, 519; 37 id., 560; 39 id., 5; 35 Barb., 525; 50 id., 194; 39 id., 140; 51 id., 378; 57 id., 488; 1 Hun, 655; 5 N. Y. Sup. Ct. (T. & C.), 386; 43 St. Rep., 334; 30 Barb., 159; 44 St. Rep., 786; 46 id., 185; 76 N. Y., 9; 63 id., 114.

¹ 4 Civ. Pro. R., 230; 19 Abb. N. C., 433; 117 N. Y., 198; 27 St. Rep., 148; 29 id., 926, 931; 31 id., 454, 740; 41 Hun, 110; 47 id., 577; 56 id., 126, 130, 445; 56 id., 128, 445; 34 St. Rep., 500; 48 id., 171, 847; 42 id., 755; 47 id., 530.

of that section, by a creditor of the corporation, or by a trustee, director, manager or other officer of the corporation, having a general superintendence of its concerns.¹

§ 1783. *This article, how construed.*—This article does not divest or impair, any visitatorial power over a corporation, which is vested by statute in a corporate body, or a public officer.²

§ 2469. *Receiver of personal property*.—5. No person shall be appointed a receiver in this State, who is not a resident thereof, nor shall any person continue to act as receiver after he ceases to be a resident thereof, and the judgment creditor may apply to the court or judge that appointed such receiver, within thirty days after said receiver ceases to be a resident of this State, for the appointment of another person in his place, upon such notice to the persons interested as the court or judge may direct. (Added by Laws of 1892, chapter 85.)³

§ 3320. *Receiver's commission.*—A receiver, except as otherwise specially prescribed by statute, is entitled, in addition to his lawful expenses, to such a commission, not exceeding five per centum, upon the sums received and disbursed by him, as the court by which, or the judge by whom he is appointed, allows.

§ 2. Any receiver, assignee, guardian, trustee, committee, executor or administrator, required by law to give a bond as such, may include as a part of his lawful expenses such reasonable sum, not exceeding one per centum upon the amount of such bond, paid his sureties thereon, as such court or judge allows. (Amended Laws of 1892, chapter 465.)⁴

III. ACTIONS TO PROCURE THE DISSOLUTION OF A CORPORATION, AND ACTIONS TO ENFORCE THE INDIVIDUAL LIABILITY OF THE OFFICERS OR MEMBERS OF A CORPORATION, WITH OR WITHOUT A DISSOLUTION THEREOF.

§ 1784. *Action by judgment creditor for sequestration, etc.*—Where final judgment for a sum of money has been rendered

¹ 4 Civ. Pro. R., 230; 27 St. Rep., 148; 29 id., 926, 931; 31 id., 740; 117 N. Y., 194; 14 Abb. N. C., 436; 19 id., 433; 47 Hun, 577; 56 id., 126, 130, 134; 65 How. Pr., 342; 34 St. Rep., 500; 15 Daly, 33.

² 26 St. Rep., 931; 48 id., 847; 47 id., 530.

³ 17 Civ. Pro. R., 383; 27 Abb. N. C., 35; 36 St. Rep., 279.

⁴ 9 Civ. Pro. R., 113; 4 St. Rep., 704; 11 id., 481; 46 Hun, 308; 101 N. Y., 478.

against a corporation created by or under the laws of the State, and an execution, issued thereupon to the sheriff of the county, where the corporation transacts its general business, or where its principal office is located, has been returned wholly or partly unsatisfied, the judgment creditor may maintain an action to procure a judgment, sequestrating the property of the corporation, and providing for a distribution thereof, as prescribed in section 1793 of the Code of Civil Procedure.¹

§ 1785. *Action to dissolve a corporation.*—In either of the following cases, an action to procure a judgment, dissolving a corporation, created by or under the laws of the state, and forfeiting its corporate rights, privileges, and franchises, may be maintained, as prescribed in the next section :

1. Where the corporation has remained insolvent for at least one year.

2. Where it has neglected or refused, for at least one year, to pay and discharge its notes or other evidences of debt.

3. Where it has suspended its ordinary and lawful business for at least one year.

4. If it has banking powers, or power to make loans or pledges or deposits, or to make insurances, where it becomes insolvent or unable to pay its debts, or has violated any provision of the act by or under which it was incorporated, or of any other act binding upon it.²

§ 1786. *Id.; by whom to be brought.*—An action specified in the last section may be maintained by the attorney-general in the name and in behalf of the people; and whenever a creditor or stockholder of any corporation submits to the attorney-general a written statement of facts, verified by oath, showing grounds for an action under the provisions of the last section, and the attorney-general omits, for sixty days after this submission, to commence an action specified in the last section, then, and not otherwise, such creditor or stockholder may apply to the proper court

¹ 15 Civ. Pro. R., 86; 19 id., 384; 56 Super. Ct., 588; 21 Civ. Pro. R., 23; 37 St. Rep., 104; 77 N. Y., 272; 39 St. Rep., 412; 59 Hun, 473; 42 St. Rep., 755.

² 17 N. Y., 93; 12 Hun, 264; 15 id., 126; 42 St. Rep., 755; 3 How. Pr. N. S., 137; 17 Abb. N. C., 115; 42 Hun, 201; 57 id., 379; 8 Civ. Pro. R., 390; 17 Civ. Pro. R., 130; 102 N. Y., 389; 23 St. Rep., 346; 32 id., 718; 34 id., 571; 35 id., 873; 125 N. Y., 513; 34 St. Rep., 571; 35 id., 873.

for leave to commence such an action, and on obtaining leave, may maintain the same accordingly.¹

§ 1787. *Temporary injunction*.—In an action, brought as prescribed in this article, the court may, upon proof of the facts authorizing the action to be maintained, grant an injunction order, restraining the corporation, and its trustees, directors, managers, and other officers, from collecting or receiving any debt or demand, and from paying out, or in any way transferring, or delivering, to any person, any money, property, or effects of the corporation, during the pendency of the action; except by express permission of the court. Where the action is brought to procure the dissolution of the corporation, the injunction may also restrain the corporation, and its trustees, directors, managers, and other officers, from exercising any of its corporate rights, privileges, or franchises, during the pendency of the action; except by express permission of the court. The provisions of title second of chapter seventh of this act, relating to the granting, vacating, or modifying of an injunction order, apply to an injunction order, granted as prescribed in this section; except that it can be granted only by the court.²

§ 1788. *Receiver may be appointed permanent and temporary receiver; powers, etc., of temporary receiver*.—[am'd 1882.] In such an action, the court may also, at any stage thereof, appoint one or more receivers of the property of the corporation. A receiver, so appointed, before final judgment is a temporary receiver, until final judgment is entered. A temporary receiver has power to collect and receive the debts, demands and other property of the corporation; to preserve the property and the proceeds of the debts and demands collected; to sell, or otherwise dispose of, the property as directed by the court; to collect, receive, and preserve the proceeds thereof; and to maintain any action or special proceeding, for either of those purposes. He must qualify as prescribed by law for the qualification of a permanent receiver, unless additional powers are specially conferred upon him, as prescribed in the next section. A temporary receiver has only the powers specified in this section, and those

¹ 17 Abb. N. C., 115; 22 id., 211; 105 N. Y., 389; 42 Hun, 201; 8 Civ. Pro. R., 390; 17 id., 130; 48 St. Rep., 172; 61 N. Y., 524, 6 Daly, 455; 6 Abb. N. C., 293; 19 Hun, 498; 18 id., 387; 7 Daly, 273; 47 How. Pr., 451; 53 id., 16.

² 23 St. Rep., 346; 8 Civ. Pro. R., 39; 17 id., 130; 77 N. Y., 272.

which are incidental to the exercise thereof. A receiver appointed by or pursuant to a final judgment in the action, or a temporary receiver who is continued by the final judgment, is a permanent receiver, and *has all the powers and authority conferred, and is subject to all the duties and liabilities imposed upon a receiver appointed* upon the voluntary dissolution of a corporation.*¹

§ 1789. *Additional powers and duties may be conferred on temporary receivers.*—A temporary receiver, appointed as prescribed in the last section, is, in all respects, subject to the control of the court. In addition to the powers conferred upon him, by the provisions of the last section, the court may, by the order or interlocutory judgment appointing him, or by an order subsequently made in the action, or by the final judgment, confer upon him the powers and authority, and subject him to the duties and liabilities, of a permanent receiver, or so much thereof as it thinks proper; except that he shall not make any distribution among the creditors or stockholders, before final judgment, unless he is specially directed so to do by the court.²

§ 1790. *Making stockholders, etc., parties.*—Where the action is brought by a creditor of a corporation, and the stockholders, directors, trustees, or other officers, or any of them, are made liable by law, in any event or contingency, for the payment of his debt, the persons, so made liable, may be made parties defendant, by the original or by a supplemental complaint; and their liability may be declared and enforced by the judgment in the action.

§ 1791. *When separate action may be brought against them.*—Where the stockholders, directors, trustees, or other officers of a corporation, who are made liable, in any event or contingency, for the payment of a debt, are not made parties defendant, as prescribed in the last section, the plaintiff in the action may maintain a separate action against them, to procure a judgment, declaring, apportioning and enforcing their liability.

* The italicized words added by L. 1882, ch. 399. The word "upon" left out of engrossed bill.

By Laws of 1880, ch. 245, the provisions of 2 R. S., 464, § 42, are made applicable to a receiver appointed under § 1788, Code Civ. Pro. See ch. vi. on receivers, § 119, *supra*.

¹ 105 N. Y., 389; 42 Hun, 184, 201; 57 id., 447; 19 Abb. N. C., 234; 3 Civ. Pro. R., 127, 434, 442; 12 Civ. Pro. R., 31; 15 id., 86; 17 id., 130; 23 St. Rep., 346; 25 id., 429; 32 id., 1075; 36 id., 269.

² 32 St. Rep., 1075; 3 Civ. Pro. R., 127; 57 Hun, 447; 36 St. Rep., 269.

§ 1792. *Proceedings in either action.*—In an action, brought as prescribed in either of the last two sections, the court must, when it is necessary, cause an account to be taken of the property and of the debts of the corporation, and thereupon the defendants' liability must be apportioned accordingly; but, if it affirmatively appears that the corporation is insolvent and has no property to satisfy its creditors, the court may, without taking such an account, ascertain and determine the amount of each defendant's liability, and enforce the same accordingly.¹

§ 1793. *Judgment; property of corporation to be distributed.*—A final judgment in an action, brought against a corporation, as prescribed in this article, either separately or in conjunction with its stockholders, directors, trustees or other officers, must provide for a just and fair distribution of the property of the corporation, and of the proceeds thereof, among its fair and honest creditors, in the order and in the proportions prescribed by law, in case of the voluntary dissolution of a corporation.²

§ 1794. *Id.; stock subscriptions to be recovered.*—Where the stockholders of a corporation are parties to the action, if the property of the corporation is not sufficient to discharge its debts, the interlocutory or final judgment, as the case requires, must adjudge that each stockholder pay into court the amount due and remaining unpaid, on the shares of the stock held by him, or so much thereof as is necessary to satisfy the debts of the corporation.³

§ 1795. *Id.; as to liabilities of directors and stockholders.*—If it appears that the property of the corporation, and the sums collected or collectible from the stockholders, upon their stock subscriptions, are, or will be, insufficient to pay the debts of the corporation, the court must ascertain the several sums for which the directors, trustees or other officers, or the stockholders of the corporation, being parties to the action, are liable; and must adjudge that the same be paid into court, to be applied, in such proportions and in such order as justice requires, to the payment of the debts of the corporation.⁴

§ 1796. *Effect of this article limited.*—This article (chapter) does not repeal or affect any special provision of law, prescribing that

¹ 17 Civ. Pro. R., 130.

² 3 Civ. Pro. R., 442; 17 id., 130; 27 St. Rep., 602; 54 Hun, 484; 25 Abb. N. C., 84; 53 Super. Ct., 19; 3 St. Rep., 413; 21 Civ. Pro. R., 23.

³ 17 Civ. Pro. R., 130.

⁴ 17 Civ. Pro. R., 130.

a particular kind of corporation shall 'cease to exist, or shall be dissolved, in a case or in a manner, not prescribed in this article; or any special provision of law, prescribing the mode of enforcing the liability of the stockholders of a particular kind of corporation.¹

IV. ACTION BY THE PEOPLE TO ANNUL A CORPORATION.

§ 1797. *Action by attorney-general, when legislature directs.*—The attorney-general, whenever he is so directed by the legislature, must bring an action against a corporation created by or under the laws of the state, to procure a judgment, vacating or annulling the act of incorporation, or any act renewing the corporation, or continuing its corporate existence, upon the ground that the act was procured upon a fraudulent suggestion, or the concealment of a material fact, made by or with the knowledge and consent of any of the persons incorporated.²

§ 1798. *Id.; by leave of court.*—Upon leave being granted, as prescribed in the next section, the attorney-general may bring an action against a corporation created by or under the laws of the state, to procure a judgment, vacating the charter or annulling the existence of the corporation, upon the ground that it has, either³

1. Offended against any provision of any act, by or under which it was created, altered or renewed, or an act amending the same, and applicable to the corporation;⁴ or,

2. Violated any provision of law, whereby it has forfeited its charter, or become liable to be dissolved, by the abuse of its powers;⁵ or,

3. Forfeited its privileges or franchises by a failure to exercise its powers; or,

4. Done or omitted any act, which amounts to a surrender of its corporate rights, privileges and franchises; or,

¹ 17 Civ. Pro. R., 130.

² 29 St. Rep., 350; 22 Abb. N. C., 211; 56 Hun, 54; 48 St. Rep., 172.

³ 16 Civ. Pro. R., 1; 18 id., 406; 20 St. Rep., 383; 27 id., 287, 293; 38 id., 564; 32 id., 718; 2 McC. R., 295; 121 N. Y., 582; 22 Abb. N. C., 211; 47 Hun, 577; 50 id., 511; 54 id., 355, 385; 57 id., 379; 18 St. Rep., 122; 35 id., 873; 40 id., 281; 125 N. Y., 513; 26 Abb. N. C., 411, 419; 48 St. Rep., 172, 578; 42 id., 754.

⁴ 54 Hun, 374.

⁵ 22 Abb. N. C., 165.]

5. Exercised a privilege or franchise, not conferred upon it by law.¹

§ 1799. *Leave, when and how granted.*—Before granting leave, the court may, in its discretion, require such previous notice of the application as it thinks proper, to be given to the corporation, or any officer thereof, and may hear the corporation in opposition thereto.²

§ 1800. *Action triable by a jury.*—An action, brought as prescribed in this article (*chapter*), is triable, of course and of right, by a jury, as if it was an action specified in section nine hundred and sixty-eight of this act, and without procuring an order, as prescribed in section nine hundred and seventy of this act.³

§ 1801. *Judgment.*—Where any of the matters, specified in section 1797 or section 1798 of this act, are established in an action, brought as prescribed in either of those sections, the court may render final judgment that the corporation, and each officer thereof, be perpetually enjoined from exercising any of its corporate rights, privileges, and franchises; and that it be dissolved. The judgment must also provide for the appointment of a receiver, the taking of an account, and the distribution of the property of the corporation, among its creditors and stockholders, as where a corporation is dissolved upon its voluntary application, as prescribed in chapter seventeenth of this act.⁴

§ 1802. *Injunction may issue.*—In an action, brought as prescribed in this article (*chapter*), an injunction order may be granted, at any stage of the action, restraining the corporation, and any or all of its directors, trustees, and other officers, from exercising any of its corporate rights, privileges, or franchises; or from exercising certain of its corporate rights, privileges, or franchises, specified in the injunction order; or from exercising any franchise, liberty, or privilege, or transacting any business, not allowed by law. Such an injunction is deemed one of those specified in section six hundred and three of this act, and all the provisions of title second of chapter seventh of this act, applicable to an injunction specified in that section apply to an injunction granted

¹ 22 Abb. N. C., 165.

² McC., 295; 36 St. Rep., 384; 26 Abb. N. C., 411, 414.

³ 57 N. Y., 161.

⁴ 48 St. Rep., 578.

as prescribed in this section, except that it can be granted only by the court.¹

§ 1803. *Copy of judgment roll to be filed and published.*—Where final judgment is rendered against a corporation, in an action, brought as prescribed in this article, the attorney-general must cause a copy of the judgment roll to be forthwith filed in the office of the secretary of state; who must cause a notice of the substance and effect of the judgment, to be published, for four weeks, in the newspaper printed at Albany, in which legal notices are required to be published, and also in a newspaper printed in the county, wherein the principal place of business of the corporation was located.

V. PROVISIONS APPLICABLE TO TWO OR MORE OF THE ACTIONS SPECIFIED IN THIS TITLE.

§ 1804. *Certain corporations excepted from certain articles of this title.*—Articles second, third, and fourth of this title do not apply to an incorporated library society; to a religious corporation; to a select school or academy, incorporated by the regents of the university, or by an act of the legislature; or to a municipal or other political corporation, created by the constitution, or by or under the laws of the state.²

§ 1805. *Officers and agents may be compelled to testify.*—In an action brought as prescribed in article second, third, or fourth of this title, a stockholder, officer, alienee, or agent of a corporation, is not excused from answering a question, relating to the management of the corporation, or the transfer or disposition of its property, on the ground that his answer may expose the corporation to a forfeiture of any of its corporate rights, or will tend to convict him of a criminal offense, or to subject him to a penalty or forfeiture. But his testimony shall not be used, as evidence against him, in a criminal action or special proceeding.³

§ 1806. *Injunction staying actions by creditors.*—In such an action the court may, in its discretion, on the application of either party, at any stage of the action, before or after final judgment, and with or without security, grant an injunction order, restraining the creditors of the corporation from bringing actions against the defendants, or any of them, for the recovery of a sum of

¹ 2 Johns. Ch. R., 391.

² 29 St. Rep., 931; 56 Hun, 133; 7 Civ. Pro. R. 5.

³ 7 Civ. Pro. R., 5; 37 St. Rep., 618.

money, or from taking any further proceedings in such actions, theretofore commenced. Such an injunction has the same effect, and, except as otherwise expressly prescribed in this section, is subject to the same provisions of law, as if each creditor, upon whom it is served, was named therein, and was a party to the action in which it is granted.¹

§ 1807. *Creditors may be brought in.*—In such an action, the court may, at any stage of the action, before or after final judgment, make an order requiring all the creditors of the corporation to exhibit and prove their claims, and thereby make themselves parties to the action, in such a manner and in such a seasonable time, not less than six months from the first publication of notice of the order as the court directs; and that the creditors, who make default in so doing, shall be precluded from all benefit of the judgment, and from any distribution which may be made thereunder, except as hereinafter provided. Notice of the order must be given by publication in such newspapers, and for such a length of time as the court directs. *Notwithstanding such order, any such creditor, who shall exhibit and prove his claim in the manner directed thereby, with proof, by affidavit or otherwise, that he has had no notice or knowledge thereof in time to comply therewith, any time before an order is made directing a final distribution of the assets of such corporation, shall be entitled to have his claim received, and shall have the same rights and benefits thereon, so far as the assets of such corporation then remaining undistributed may render possible, as if his claim had been exhibited and proved within the time limited by such order.* [Amended by adding the italicized words. L. 1882, ch. 372.]²

§ 1808. *When attorney general must bring action.*—Where the attorney-general has good reason to believe that an action can be maintained in behalf of the people of the state, as prescribed in article second, third or fourth of this title (*i. e., the last three chapters*), except section seventeen hundred and ninety-seven of this act, he must bring an action accordingly, or apply to a competent court for leave to bring an action, as the case requires, if, in his opinion, the public interests require that an action should be brought. In a case where the action can be brought only by the attorney-general in behalf of the people, if a creditor, stockholder, director or trustee of the corporation, ap-

¹ 3 Civ. Pro. R., 127; 7 *id.*, 5.

² 7 Civ. Pro. R., 5; 93 N. Y., 387; 39 St. Rep., 414.

plies to the attorney-general for that purpose, and furnishes the security required by law, the attorney-general must bring the action, or apply for leave to bring it, if he has good reason to believe that it can be maintained. Where such an application is made, section nineteen hundred and eighty-six of this act applies thereto, and to the action brought in pursuance thereof.¹

§ 1809. *Requisites of injunction against corporations in certain cases.*—An injunction order, suspending the general and ordinary business of a corporation, or of a joint stock association, consisting of seven or more persons, or suspending from office, or restraining from the performance of his duties, a trustee, director, or other officer thereof, can be granted only by the court, upon notice of the application thereof, to the proper officer of the corporation or association, or to the trustee, director, or other officer enjoined. If such an injunction order is made, otherwise than as prescribed in this section, it is void.²

§ 1810. *Id.; of order appointing receiver in certain cases.*—A receiver of the property of a corporation can be appointed only by the court, and in one of the following cases :

1. An action, brought as prescribed in article second, third or fourth of this title.

2. An action brought for the foreclosure of a mortgage upon the property, of which the receiver is appointed, where the mortgage debt, or the interest thereupon, has remained unpaid, at least thirty days after it was payable, and after payment thereof was duly demanded of the proper officer of the corporation; and where either the income of property is specifically mortgaged, or the property itself is probably insufficient to pay the mortgage debt.

3. An action brought by the attorney-general, or by a stockholder, to preserve the assets of a corporation, having no officer empowered to hold the same.

4. A special proceeding for the voluntary dissolution of a corporation.

Where the receiver is appointed in an action, otherwise than by or pursuant to a final judgment, notice of the application for his

¹ 7 Civ. Pro. R., 5; 117 N. Y., 194; 27 St. Rep., 148; 29 id., 928, 931; 56 Hun, 128, 133; 59 N. Y., 143; 45 id., 310; 79 id., 267; 48 St. Rep., 172; 42 id., 754.

² 56 Super. Ct., 153; 57 id., 3; 14 Abb. N. C., 328; 6 Civ. Pro. R., 106, 113; 7 id., 5; 16 St. Rep., 882; 48 id., 698.

appointment, must be given to the proper officer of the corporation.¹

§ 1811. *Id.; of judicial suspension or removal of an officer.*—A trustee, director, or other officer of a corporation shall not be suspended or removed from office, by a court or judge, otherwise than by the final judgment of a competent court, in an action brought by the attorney-general, as prescribed in section seven-teen eighty-one of this act.²

§ 1812. *Application of the last three sections.*—The last three sections apply to an action or a special proceeding, against a corporation, or a joint stock association, created by or under the laws of the State, or a trustee, director, or other officer thereof; or against a corporation, or joint stock association, created by or under the laws of another State, government, or country, or a trustee, director, or other officer thereof, where the corporation or association does business within the State, or has, within the State, a business agency or a fiscal agency, or an agency for the transfer of its stock.³

§ 1813. *In action against stockholders, misnomer, etc., not available.*—Where an action, authorized by a law of the State, is brought against one or more persons, as stockholders of a corporation or joint stock association, an objection to any of the proceedings cannot be taken, by a person properly made a defendant in the action, on the ground that the plaintiff has joined with him, as a defendant in the action, a person, whose name appears on the stock books of the corporation or association, as a stockholder thereof, by the name so appearing; but who is misnamed, or dead, or is not liable for any cause. In such a case, the court may, at any time before final judgment, upon motion of either party, amend the pleadings and other papers, without prejudice to the previous proceedings, by substituting the true name of the person intended, or by striking out the name of the person who is dead, or not liable, and in a proper case, inserting the name of his representative or successor.⁴

¹ 102 N. Y., 449; 19 St. Rep., 906; 3 Civ. Pro. R., 127; 6 id., 90, 106, 113, 342; 7 id., 5; 12 Hun, 144; 13 id., 671.

² 7 Civ. Pro. R., 5.

³ 7 Civ. Pro. R., 5; 56 Super. Ct., 153.

⁴ 7 Civ. Pro. R., 5.

VI. PROCEEDINGS FOR THE VOLUNTARY DISSOLUTION OF A CORPORATION.

§ 2419. *When a majority of directors, etc., may petition for dissolution.*—If a majority of the directors, trustees or other officers, having the management of the concerns of a corporation created by or under the laws of the state, discover that the stock, effects and other property thereof are not sufficient to pay all just demands, for which it is liable, or to afford a reasonable security to those who may deal with it; or if, for any reason, they deem it beneficial to the interests of the stockholders, that the corporation should be dissolved; they may present a petition, to the supreme court, or to a superior city court of the city where the principal office of the corporation is located, praying for a final order dissolving the corporation, as prescribed in this title.¹

§ 2420. *Id.; when they are equally divided.*—If a corporation, created under a general statute of the state for the formation of corporations, has an even number of trustees or directors, who are equally divided respecting the management of its affairs, and the entire stock of the corporation is, at that time, owned by the trustees or directors, or is so divided that one-half thereof is owned or controlled by persons favoring the course of one-half of the trustees or directors, and one-half by persons favoring the course of the other half of them, the trustees or directors, one or more of them, may present a petition as prescribed in the last section. But this section does not apply to a savings bank, a trust company, a safe deposit company or a corporation formed to rent safes in burglar and fire-proof vaults, or for the construction or operation of a railroad, or for aiding in the construction thereof, or for carrying on the business of banking or insurance, or intended to derive a profit from the loan or use of money.²

§ 2421. *Contents of petition.*—The petition must show that the case is one of those specified in the last two sections, and must state the reasons, which induce the petitioner or petitioners to desire the dissolution of the corporation. A schedule must be annexed to the petition, contained the following matters, as far as

¹ 21 St. Rep., 89; 23 id., 346; 27 id., 334; 28 id., 418; 22 Abb. N. C., 231; 3 Civ. Pro. R., 270; 6 id., 342; 15 id., 215; 17 id., 130; 16 Daly, 419; 48 St. Rep., 175; 43 id., 628.

² 28 St. Rep., 418; 3 Civ. Pro. R., 270; 6 id., 342; 15 Daly, 415; 43 St. Rep., 629.

the petitioner or petitioners know, or have the means of knowing the same :

1. A full and true account of all the creditors of the corporation, and of all unsatisfied engagements, entered into by, and subsisting against, the corporation.

2. A statement of the name and place of residence of each creditor, and of each person with whom such an engagement was made, and to whom it is to be performed, if known ; or, if either is not known, a statement of that fact.

3. A statement of the sum owing to each creditor, or other person specified in the last subdivision, and the nature of each debt, demand or other engagement.

4. A statement of the true cause and consideration of the indebtedness to each creditor.

5. A full, just and true inventory of all the property of the corporation, and of all the books, vouchers and securities relating thereto.

6. A statement of each incumbrance upon the property of the corporation, by judgment, mortgage, pledge or otherwise.

7. A full, just and true account of the capital stock of the corporation, specifying the name of each stockholder, his residence, if it is known, or, if it is not known, stating that fact ; the number of shares belonging to him, the amount paid in upon his share and the amount still due thereupon.¹

§ 2422. *Affidavits to be annexed.*—An affidavit, made by each of the petitioners, to the effect that the matters of fact, stated in the petition and the schedule, are just and true, so far as the affiant knows or has the means of knowing the same, must be annexed to the petition and schedule.²

§ 2423. *Presentation of petition, etc. Order to show cause.*—Where the petition is addressed to the supreme court, the papers must be presented at a term of the court, held within the judicial district, embracing the county wherein the principal office of the corporation is located. In a case specified in section two thousand four hundred and twenty of this act, the court may, in its discretion, entertain or dismiss the application. Where it entertains the application, or where the case is one of those specified in section two thousand and four hundred and nineteen of this act, the court must make an

¹ 8 Civ. Pro. R., 270; 6 id., 842.

² 6 Civ. Pro. R., 842; 21 St. Rep., 89.

order, requiring all persons interested in the corporation to show cause before it, or before a referee designated in the order, at a time and place therein specified, not less than three months after the granting of the order, why the corporation should not be dissolved. The order must be entered, and the papers must be filed, within ten days after the order is made, with the clerk of the court, or, in the supreme court, with the clerk of the county where the principal office of the corporation is located. *If it shall be made to appear to the satisfaction of the court that the corporation is insolvent, the court may at any stage of the proceeding before final order, on motion of the petitioners on notice to the Attorney-General, or on motion of the Attorney-General on notice to the corporation, appoint a temporary receiver of the property of the corporation, which receiver shall have all the powers and be subject to all the duties that are defined as belonging to temporary receivers appointed in an action, in section one thousand seven hundred and eighty-eight of this act. The court may also, in its discretion, at any stage in the proceeding after such appointment upon like motion and notice, confer upon such temporary receiver the powers and authority, and subject him to the duties and liabilities of a permanent receiver, or as much thereof as it thinks proper, except that he shall not make any final distribution among the creditors and stockholders, before final order in the proceedings, unless he is specially directed so to do by the court. If such receiver be appointed, the court may in its discretion, on like motion and notice, with or without security, at any stage of the proceeding before the final order, grant an injunction, restraining the creditors of the corporation from bringing any action against the said corporation for the recovery of a sum of money, or from taking any further proceedings in such an action theretofore commenced. Such injunction shall have the same effect and be subject to the same provisions of law as if each creditor upon whom it be served was named therein.*¹ [Amended Laws of 1889, chapter 314, by adding the italicized words.]

§ 2424. *Order to be published.*—A copy of the order must be published, as prescribed therein, at least once in each of the three weeks immediately preceding the time fixed therein for showing cause, in the newspaper printed at Albany, in which legal notices are required to be published; and also in one or more newspapers,

¹ 23 St. 346; 3 Civ. Pro. R., 270; 53 Hun, 174; 40 St. Rep., 622; 41 id., 356; 43 St. Rep., 164, 629.

specified in the order, published in the city or county wherein the order is entered.¹

§ 2425. *Id.; to be served on creditors and stockholders.*—A copy of the order must also be served upon each of the persons, specified in the schedule as a creditor or stockholder of the corporation, or as a person to whom an engagement of the corporation is to be performed, other than a person whose residence is stated to be unknown, or to be without the United States. The service must be made, either personally, at least twenty days before the time appointed for the hearing, or by depositing a copy of the order, at least forty days before the time so appointed, in the postoffice, inclosed in a postpaid wrapper, addressed to the person to be served at his residence, as stated in the schedule.

§ 2426. *Hearing.*—At the time and place specified in the order, or at the time and place to which the hearing is adjourned, the court, or the referee, must hear the allegations and proofs of the parties, and determine the facts. If a referee was not designated in the order to show cause, the court may, in its discretion, appoint a referee when or after the order is returnable. The decision of the court, or the report of the referee, must be in writing, and must be made and filed with all convenient speed. It must contain a statement of the effects, credits and other property, and of the debts and other engagements of the corporation, and of all other matters pertaining to its affairs.²

§ 2427. *Id.; Original papers may be used.*—The court or the referee is entitled to use, upon the hearing, the original petition and the schedules annexed thereto; and the clerk must transmit them accordingly, upon the written order of the judge or of the referee. In that case, they must be returned with the decision or report.

§ 2428. *Application for final order.*—Where the hearing is before a referee, a motion for a final order must be made to the court, upon a notice to each person who has made himself a party to the proceedings, by filing with the clerk, before the close of the hearing, a notice of his appearance, in person or by attorney, specifying a postoffice within the state, where such a notice may

¹ 40 St. Rep., 624; 43 id., 629.

² 3 Civ. Pro. R., 270; 4 Abb. N. C., 251, 221, 178, 25, 67; 13 Hun, 115; 16 id., 291; 73 N. Y., 571; 74 id., 456; 12 Hun, 488.

be served. The notice may be served as prescribed in this act, for the service of a paper upon an attorney in an action. Where the hearing was before the court, a motion for a final order may be made immediately, or at such a time and upon such a notice as the court prescribes.

§ 2429. *Final order.*—Upon an application for a final order, if it appears to the court, in a case specified in section two thousand four hundred and nineteen of this act, that the corporation is insolvent, or, in a case specified either in that section, or in section two thousand four hundred and twenty of this act, that, for any reason, a dissolution of the corporation will be beneficial to the interests of the stockholders, and not injurious to the public interests, the court may make a final order dissolving the corporation, and appointing one or more receivers of its property. Upon the entry of the order, the corporation is dissolved. The court may, in its discretion, appoint a director, trustee or other officer, or a stockholder of the corporation, a receiver of its property.¹

§ 2430. *Certain sales, etc., void.*—A sale, assignment, mortgage, conveyance, or other transfer, of any property of a corporation, made after the filing of a petition as prescribed in this title, in payment of, or as security for, an existing or prior debt, or for any other consideration; or a judgment thereafter rendered against the corporation by confession, or upon the acceptance of an offer, is absolutely void, as against the receiver appointed in the special proceeding, and as against the creditors of the corporation.²

§ 2431. *Certain corporations exempt from the title.*—This title does not apply to an incorporated library society, to a religious corporation, or to a select school or academy incorporated by the regents of the university or by the legislature, or to a municipal or other political corporation.

In the case of corporations affected by the provisions of this title, and not having stockholders, it shall be sufficient for the purposes of this title, to notify, name and refer to the members of such corporation, instead of stockholders, as herein provided. [Amended by adding the italicized words. L. 1884, ch. 406.]*

¹ 18 St. Rep., 175; 28 id., 418; 15 Civ. Pro. R., 215; 15 Daly, 415.

² 8 Page, 380.

³ 22 Abb. N. C., 232; 28 St. Rep., 420; 15 Daly, 415; 43 St. Rep., 628.

VII. MISCELLANEOUS PROVISIONS OF THE CODE OF CIVIL PROCEDURE REGULATING THE CONDUCT OF ACTIONS AGAINST A CORPORATION.

§ 431, subd. 3. *Personal service of summons on domestic corporations, how made.*—Personal service of the summons upon a defendant, being a domestic corporation, must be made by delivering a copy thereof within the state (*except in cases of municipal corporations*), to the president or other head of the corporation, the secretary or clerk to the corporation, the cashier, the treasurer, or a director or managing agent.¹

§ 432. *Id.* ; *upon a foreign corporation.*—Personal service of the summons, upon a defendant, being a foreign corporation, must be made by delivering a copy thereof, within the state, as follows:*

1. To the president, treasurer, or secretary ; or, if the corporation lacks either of those officers, to the officer performing corresponding functions, under another name.

2. To a person designated for the purpose by a writing, under the seal of the corporation, and the signature of its president, vice-president, or other acting head, accompanied with the written consent of the person designated, and filed in the office of the secretary of state. The designation must specify a place, within the state, as the office or residence of the person designated ; and, if it is within a city, the street, and street number, if any, or other suitable designation of the particular locality. It remains in force, until the filing in the same office of a written revocation thereof, or of the consent, executed in like manner ; but the person designated may, from time to time, change the place specified as his office or residence, to some other place within the state, by a writing, executed by him, and filed in like manner. The secretary of state may require the execution of any instrument, specified in this section, to be authenticated as he deems proper, and he may refuse to file it without such an authentication. An exemplified copy of a designation so filed, accompanied with a certificate that it has not been revoked, is presumptive evidence of

¹ 15 St. Rep., 686; 29 id., 235; 30 id., 691; 31 id., 465; 32 id., 1119; 48 Hun, 190; 51 id., 298; 56 id., 431; 121 N. Y., 224; 13 Civ. Pro. R., 233; 14 id., 262; 15 id., 202; 18 id., 363; 39 St. Rep., 157; 18 Civ. Pro. R., 282; 4 Abb. N. C., 40; 20 id., 386; 38 St. Rep., 406; 39 id., 157.

² 23 Abb. N. C., 233; 24 id., 236; 32 St. Rep., 849; 87 N. Y., 137; 115 id., 437; 85 Hun, 369; 13 Civ. Pro. R., 233.

the execution thereof, and conclusive evidence of the authority of the officer executing it.

3. If such a designation is not in force, or if neither the person designated, nor an officer specified in subdivision first of this section, can be found with due diligence, and the corporation has property within the state, or the cause of action arose therein ; to the cashier, a director, or a managing agent of the corporation, within the state.¹

§ 438. *Cases in which the service of a summons by publication, etc., may be ordered.*—[am'd 1879 and 1884.] An order, directing the service of a summons upon a defendant, without the state, or by publication, may be made in either of the following cases :

1. Where the defendant to be served is a foreign corporation ; or, being a natural person, is not a resident of the state ; or where, after diligent inquiry, the defendant remains unknown to the plaintiff, or the plaintiff is unable to ascertain whether the defendant is or is not a resident of the state.

6. Where the defendant is a resident of the state, or a domestic corporation ; and an attempt was made to commence the action against the defendant, as required in chapter fourth of this act, before the expiration of the limitation applicable thereto, as fixed in that chapter ; and the limitation would have expired, within sixty days next preceding the application, if the time had not been extended by the attempt to commence the action.

7. Where the action is against the stockholders of a corporation, or joint-stock company, and is authorized by a law of the state, and the defendant is a stockholder thereof.

When a copy of the summons is required by subdivision first or subdivision second of section four hundred and twenty-six of this act, or by section four hundred and twenty-nine of this act, to be delivered to a person other than the defendant, an order, directing the service of a copy of the summons upon such person without the state, or by publication, may be made as prescribed in this section, as if such person was the defendant in the action, and upon a verified complaint and the same proof with respect to such person, as is required in the next succeeding section with respect to a defendant. And sections four hundred and forty to four hundred and forty-four, both inclusive, apply to the proceedings in like manner as if such person was a defendant.²

¹ 5 St. Rep., 734; 104 N. Y., 480; 23 Abb. N. C., 231; 12 Civ. Pro. R., 11; 16 id., 241; 17 id., 386; 70 N. Y., 223; 46 St. Rep., 662.

² 1 Civ. Pro. R., 133, 145, 220; 2 id., 55; 3 id., 69; 4 id., 276; 6 id., 216; 7 id., 393; 12 id., 267; 14 id., 45, 68; 16 id., 279, 333; 15 St. Rep., 903; 28 id.,

§ 2865. *Actions by and against officers, etc. ; and by executors, etc.*—[am'd 1882.] An action, cognizable by a justice of the peace, may be brought by or against a corporation ; by or against a natural person in his own right ; by or against a town or county officer in his official character ; or by an executor, administrator, trustee of an express trust, or a receiver in supplementary proceedings.¹

§ 2879. *Service of summons in a justice's court upon the company.*—When the defendant to be served is a corporation, the summons may be personally served upon it by delivering a copy thereof to an officer or person to whom a copy of the summons in an action brought against the corporation in the supreme court might be delivered as provided in sections 431 and 432 of this act, or to any director or trustee of the corporation by whatever official title he is called.²

§ 2880. *Id. ; special provisions in regard to railroad corporations.*—When the defendant to be served is a domestic railroad corporation, and no officer thereof resides in the county to whom a copy of the summons may be delivered, as prescribed in the last section, it may be personally served by delivering a copy thereof to a local superintendent of repairs, freight agent, agent to sell tickets, or station keeper of the corporation residing in the county, unless, at least, thirty days before it was issued, the corporation had filed in the office of the clerk of the county a written instrument, designating a person residing in the county upon whom process to be issued by a justice of the peace against it may be served, in which case the summons may be personally served by delivering a copy to the person so designated.³

§ 2881. *Id. ; relating to express companies.*—Where the defendant to be served is a corporation, association, partnership, or person, doing business in the State as an express company, and no person resides in the county to whom a copy of the summons may be delivered, as prescribed in the foregoing sections of this article, it may be personally served, by delivering a copy thereof to any local or general agent, agent to receive freight or parcels, route agent, or messenger of the defendant, residing in the county ; unless, at least thirty days before it was issued, the defendant had

317; 29 id., 228, 332; 55 Hun, 366, 369; 55 Supr. Ct., 220; 98 N. Y., 665; 112 N. Y., 382; 15 Civ. Pro. R., 74, 77, 79; 17 id., 234; 18 id., 332.

¹ 28 St. Rep., 423; 18 Civ. Pro. R., 216.

² 24 Barb., 414.

³ 24 Barb., 414.

filed, in the office of the clerk of the county, a written instrument, designating a person residing in the county, upon whom process to be issued by a justice of the peace against the defendant, may be served; in which case, the summons may be personally served by delivering a copy thereof to the person so designated.

§ 525. *Verification of pleading, and by whom made.*—The verification must be made by the affidavit of the party, or, if there are two or more parties united in interest, and pleading together, by at least one of them, who is acquainted with the facts, except as follows:

1. Where a party is a domestic corporation, the verification must be made by an officer thereof.

2. Where the party is a foreign corporation, the verification must be made by the agent or the attorney for the party.¹

§ 610. *Service of injunction upon the corporation.*—The injunction order must briefly recite the grounds for the injunction. Where it is granted by the court, it must be served by delivering a certified copy thereof: where it is granted by a judge, it must be served by showing the original order, and delivering a copy thereof. Service of the order upon a corporation may be made as prescribed in this act, for making personal service of a summons upon a corporation. Copies of the papers, upon which the order was granted, must be delivered with the copy of the order.²

§ 624. *Damages sustained when officer of corporation is enjoined.*—Where the defendant enjoined was an officer of a corporation, or joint-stock association, or a bailee, agent, trustee, or other representative of another, and the damages, sustained by him, are less than the sum specified in the undertaking, the court or the referee may also separately ascertain and determine the damages sustained, by reason of the injunction, by the corporation, association, or person, whom the defendant represents, to an amount not exceeding the surplus of the sum specified in the undertak-

¹ 2 McC., 71; 2 How. Pr., N. S., 120; 13 Daly, 36, 204; 2 St. Rep., 275; 12 id., 415; 41 Hun, 59; 2 Dem., 429; 7 Civ. Pro. R., 104, 443; 8 id., 435; 9 id., 165; 11 id., 1; 13 id., 157; 15 id., 256, 259; 19 id., 243; 21 id., 58; 39 id., 825.

² 12 St. Rep., 370; 19 id., 767; 1 Civ. Pro. R., 484; 14 id., 71; 16 id., 129; 36 St. Rep., 714.

ing; and those damages may be recovered in a separate action, brought as prescribed in the next section.

§ 636. *Grounds of issuing warrant of attachment against the corporation.*—To entitle the plaintiff to such a warrant of attachment, he must show, by affidavit, to the satisfaction of the judge granting the same, among other things as required by the Code, that the defendant is either a foreign corporation or not a resident of the state; or, if he is a natural person and a resident of the state, that he has departed therefrom, with intent to defraud his creditors, or to avoid the service of a summons, or keeps himself concealed therein with the like intent; or, if the defendant is a natural person or a domestic corporation, that he or it has removed, or is about to remove, property from the state, with intent to defraud his or its creditors; or has assigned, disposed of, or secreted, or is about to assign, dispose of or secrete property, with the like intent.¹

§ 646. *Attachment of unpaid subscription to foreign corporation.*—Under a warrant of attachment against a foreign corporation, other than a corporation created by or under the laws of the United States, the sheriff may levy upon the sum remaining unpaid upon a subscription to the capital stock of the corporation, made by a person within the county; or upon one or more shares of stock therein, held by such a person, or transferred by him, for the purpose of avoiding payment thereof.²

§ 647. *Id; interest in corporation.*—The rights or shares which the defendant has in the stock of an association or corporation together with the interest and profits thereon, may be levied upon; and the sheriff's certificate of the sale thereof entitles the purchaser to the same rights and privileges, with respect thereto, which the defendant had, when they were so attached.³

¹ 1 Civ. Pro. R., 411; 3 id., 75, 106, 162, 343; 4 id., 319, 353, 361; 6 id., 263, 268, 366, 401; 7 id., 144, 287, 300, 411; 9 id., 161; 11 id., 36; 12 id., 439; 15 id., 311; 18 id., 63; 63 How. Pr., 47, 491; 66 id., 282; 67 id., 388; 1 How. Pr. N. S., 276, 282; 3 id., 160; 14 Daly, 42, 308; 9 id., 416; 26 Hun, 24; 27 id., 234, 242, 269; 28 Hun, 22; 30 id., 248; 33 id., 484; 35 id., 395, 541; 38 id., 202; 41 id., 63; 44 id., 71, 345; 53 id., 39; 55 id., 388, 390; 45 St. Rep., 31, 388; 1 id., 779; 2 id., 270; 53 Super. Ct., 83; 7 St. Rep., 381; 8 id., 796; 13 id., 740; 14 id., 374; 21 id., 208; 24 id., 663; 28 id., 4, 155, 279; 29 id., 92; 25 id., 831; 11 Abb. N. C., 175; 13 id., 477; 15 id., 254; 87 N. Y., 141; 101 id., 5; 115 id., 39; 119 id., 160; 21 Civ. Pro. R., 121, 131, 136, 141, 162; 35 St. Rep., 546; 37 id., 302; 39 id., 163; 60 Hun, 445.

² 13 Civ. Pro. R., 77.

³ 63 How. Pr., 484; 3 Civ. Pro. R., 182; 4 id., 189; 13 id., 77.

§ 650. *Certificate of defendant's interest to be furnished.*—Upon the application of a sheriff, holding a warrant of attachment, the president or other head of an association or corporation or the secretary, cashier, or managing agent thereof, or a debtor of the defendant, or a person holding property, including a bond, promissory note, or other instrument for the payment of money, belonging to the defendant, must furnish to the sheriff a certificate, under his hand, specifying the rights or number of shares of the defendant, in the stock of the association or corporation, with all dividends declared, or incumbrances thereon; or the amount, nature, and description of the property, held for the benefit of the defendant, or of the defendant's interest in property so held, or of the debt or demand owing to the defendant, as the case requires.¹

§ 651. *Person refusing certificate may be examined.*—If a person, to whom application is made, as prescribed in the last section, refuses to give such a certificate; or if it is made to appear, by affidavit, to the satisfaction of the court, or a judge thereof, or the county judge of the county to which the warrant is issued, that there is reason to suspect that a certificate given by him is untrue, or that it fails fully to set forth the facts required to be shown thereby; the court or judge may make an order, directing him to attend, at a specified time, and at a place within the county to which the warrant is issued, and submit to an examination under oath, concerning the same. The order may, in the discretion of the court or judge, direct an appearance before a referee named therein.²

§ 707. *When judgment enforceable only against attached property.*—Where a defendant, who has not appeared, is a non-resident of the State, or a foreign corporation, and the summons was served without the State, or by publication, pursuant to an order obtained for that purpose, as prescribed in chapter fifth of this act, the judgment can be enforced only against the property which has been levied upon, by virtue of the warrant of attachment, at the time when the judgment is entered. But this section does

¹ 9 Hun, 239; 1 Civ. Pro. R., 208, 365; 3 id., 351; 4 id., 173; 9 id., 168; 13 id., 77; 16 id., 314; 8 St. Rep., 443; 12 Abb. N. C., 459; 12 Daly, 5.

² 26 Barb., 61; 48 id., 146; 1 Code R., N. S., 210; 4 Hun, 630; 26 Barb., 61; 48 id., 146; 12 Daly, 5; 8 St. Rep., 443, 1 Civ. Pro. R., 208, 365; 3 id., 351; 4 id., 173; 9 id., 168; 13 id., 77; 16 id., 314; 35 St. Rep., 639.

not declare the effect of such a judgment, with respect to the application of any statute of limitation.¹

§ 791. Subd. 8. *Preferred causes at trial.*—Certain civil causes are entitled to preference among themselves in the trial or hearing thereof, as regulated by the Code of Civil Procedure. In the eighth class of such cases is an action against a corporation, founded upon a note or other evidence of debt for the absolute payment of money.²

§ 839. *Admission by member of corporation.*—The admission of a member of an aggregate corporation, who is not a party, shall not be received as evidence against the corporation, unless it was made concerning and while engaged in a transaction, in which he was the authorized agent of the corporation.

§ 868. *Books, etc., of corporation, how produced.*—The production, upon a trial, of a book or paper, belonging to or under the control of a corporation, may be compelled, in like manner as if it was in the hands, or under the control, of a natural person. For that purpose, a subpoena *duces tecum*, or an order, made as prescribed in the last section, as the case requires, must be directed to the president, or other head of the corporation, or to officer thereof, in whose custody the book or paper is.³

§ 869. *When personal attendance not required by subpoena duces tecum.*—In a case specified in the last section, or when a subpoena duces tecum, or an order, made as prescribed in section eight hundred and sixty-six or section eight hundred and sixty-seven of this act, requires a public officer to attend, and bring a book or paper under his control, the subpoena or order is deemed to be

¹ 32 St. Rep., 747; 4 Civ. Pro. R., 393; 1 Abb. N. C., 180; 20 Civ. Pro. R., 38; 34 St. Rep., 827; 44 id., 849; 47 id., 644; 23 How. Pr., 294; 9 Abb. Pr., 66; S. C., 17 How. Pr., 106; 15 Abb. Pr., 243; 60 Barb., 107; 33 id., 71; S. C., 12 Abb. Pr., 8; 4 How. Pr., 275; 5 Johns., 37; 13 id., 192.

² 1 Civ. Pro. R., 43, 201; 4 id., 201; 5 id., 66; 67 How. Pr., 510; 91 N. Y., 239; 92 id., 646, 647; 113 id., 617; 21 St. Rep., 933; 18 Abb. N. C., 473.

³ 6 Civ. Pro. R., 360; 18 id., 200; see, also, 17 How. St. Tr., 810, 814; 5 Ga., 239; 4 Den., 392; 9 Cow., 194, 205; 10 Ala., 82; 1 Dougl. (Eng.), 359, 360; 17 Me., 440; 1 How. (Miss.), 479; 5 Cow., 153; S. C., id., 419; 14 How. Pr., 26; 18 Alb. L. J., 416; 10 Johns., 154; 1 Stra. (Eng.), 93; 2 Vin. Abr., 90 Pl., 16; 24 Me., 236; 3 Johns., 226; 5 Den., 342; 1 H. Black. (Eng.), 214, n. c.; 3 Barn. & Ald. (Eng.), 142; 1 Moo. & M. (Eng.), 416; 1 Phill. on Evid., 449; 2 id., 295, 442; 2 Nev. & Man. (Eng.), 573; S. C., 2 B. & Adolph. (Eng.), 544; 1 Greenlf. on Evid., § 493; Ang. & Ames on Corp., §§ 679, *et seq.*; 2 Sand. on Pl. & Evid., 748, 851.

sufficiently obeyed, if the book or paper is produced by a subordinate officer or employee of the corporation, or in the public office, who possesses the requisite knowledge to identify it, and to testify respecting the purposes for which it is used. If the personal attendance of a particular officer of the corporation or public officer is required, a subpoena, without a *duces tecum* clause must also be served upon him.¹

§ 929. *Book of foreign corporation; when evidence.*—Where a party wishes to prove an act or transaction of a foreign corporation, the book or books of the corporation may be used for that purpose, as presumptive evidence, whether any or all of the parties are or are not members of the corporation.

§ 930. *When a copy thereof is evidence.*—If an original book is not produced at the trial, as prescribed in the last section, a copy thereof, or of an entry therein, verified as prescribed in the next section, may be used, with like effect as the original book; provided that the party, intending to use the copy, gives the adverse party at least ten days' notice of his intention, specifying briefly the nature of the evidence proposed to be given. But this and the next section do not apply, where the foreign corporation is a party to the action, and seeks to prove its own act or transaction, in its own behalf.

§ 931. *How copy to be verified.*—The copy must be verified by the deposition, taken as prescribed by law, or the oral testimony, taken at the trial, of the person who made it, or of a person who has examined and compared it with the original book, or the entry therein. The witness must testify that the copy produced is correct; that he made it, or compared it with the original; and that he then knew that the original book so copied, or containing the entry, was the book of the corporation; or that it was then acknowledged to him to be such, by an officer or receiver of the corporation, or a person having the custody thereof, naming the person who made the acknowledgement; and he must specify where, and in whose custody, the original was then kept.

§ 1012. *References, how made of actions against the corporation.*—But a reference shall not be made, of course, upon the consent of the parties, in an action to annul a marriage, or for a divorce or a separation; or an action against a corporation to obtain a dissolution thereof, the appointment of a receiver of its property, or

¹ 6 Civ. Pro. R., 360.

the distribution of its property, unless it is brought by the attorney-general; or an action wherein a defendant, to be affected by the result of the trial, is an infant. In a case specified in this section, where the parties consent to a reference, the court may, in its discretion, grant or refuse a reference; and, where a reference is granted, the court must designate the referee.¹

§ 1217. *Judgment by default against foreign corporation, how taken.*—A judgment shall not be rendered for a sum of money only, upon an application made pursuant to the last section, except in an action specified in section six hundred and thirty-five of this act. Where the defendant is a non-resident, or a foreign corporation, and has not appeared, the plaintiff, upon the application for judgment in such an action, must produce and file the following papers:

1. Proof, by affidavit, that a warrant of attachment, granted in the action, has been levied upon property of the defendant.

2. A description of the property so attached, verified by affidavit; with a statement of the value thereof, according to the inventory.

The undertaking mentioned in section twelve hundred and sixteen, if one has been required.²

§ 393. *No limitation of action on bank notes, etc.*—This chapter does not affect an action to enforce the payment of a bill, note or other evidence of debt, issued by a moneyed corporation, or issued or put in circulation as money.³

§ 394. [*am'd 1877.*] *Action against directors, etc., of banks.*—This chapter does not affect an action against a director or stockholder of a moneyed corporation, or banking association, to recover a penalty or forfeiture imposed, or to enforce a liability created by law; but such an action must be brought within three years after the cause of action has accrued.⁴

§ 872. [*am'd 1877.*] *Depositions, applications; contents of affidavit.*—The person desiring to take a deposition, as prescribed in this article, may present to a judge of the court in which the action is pending; or, if it is pending in the supreme court, to a county judge; or, if an action is not pending, but is expected to

¹ 11 Civ. Pro. R., 94; 27 St. Rep., 610; 34 id., 853; 6 W. Dig., 42.

² 12 Barb., 83; 29 id., 87; 11 Abb. N. C., 180; 47 St. Rep., 644; 1 Civ. Pro R., 229; 2 id., 330; 60 N. Y., 53.

³ 24 Abb. N. C., 84; 51 Super. Ct., 316.

⁴ 51 Super. Ct., 316; 43 Hun, 459; 7 Civ. Pro. R., 340.

be brought, to a judge of the supreme court, or of a superior city court, or to a county judge; an affidavit setting forth as follows:

1. The names and residences of all the parties to the action, and whether or not they have appeared; and, if either of them has appeared by attorney, the name and the residence or office address of the attorney, or, if no action is pending, the names and residences of the expected parties thereto.

7. [*am'd* 1880.] Any other fact necessary to show that the case comes within one of the last two sections, and if the party sought to be examined is a corporation, the affidavit shall state the name of the officers or directors thereof, or any of them, whose testimony is necessary and material, or the books and papers as to the contents of which an examination or inspection is desired, and the order to be made in respect thereto shall direct the examination of such persons and the production of such books and papers.¹

§ 341. *Jurisdiction of county courts. Domestic corporation, etc., when deemed residents, etc.*—For the purpose of determining the jurisdiction of a county court, in either of the cases specified in the last section, a domestic corporation or joint stock association, whose principal place of business is established, by or pursuant to a statute, or by its articles of association, or is actually located within the county, is deemed a resident of the county, and personal service of a summons, made within the county, as prescribed in this act, or personal service of a mandate, whereby a special proceeding is commenced, made within the county, as prescribed in this act for personal service of a summons, is sufficient service thereof upon a domestic corporation, wherever it is located.²

§ 525. *Verification; how and by whom made.*—The verification must be made by the affidavit of the party, or, if there are two

¹ 1 Civ. Pro. R., 41, 294; 4 id., 328; 5 id., 101; 7 id., 109, 426; 9 id., 804; 12 id., 4; 14 id., 79; 15 id., 393; 16 id., 68; 17 id., 199, 209; 18 Civ. Pro. 304; 93 N. Y., 82; 26 Hun, 433; 29 id., 441; 31 id., 434; 37 id., 531; 42 id., 604; 48 id., 320; 50 id., 131; 57 id., 187; 67 How. Pr., 269; 1 How. Pr., N. S., 444; 3 id., 260; 2 McC., 319, 321; 5 St. Rep., 228, 229; 6 id., 425; 8 id., 710; 11 id., 382; 12 id., 130; 14 id., 845; 19 id., 231, 905; 21 id., 743; 23 id., 379; 24 id., 860; 25 id., 32; 27 id., 873; 28 id., 15, 214, 583; 30 id., 20, 560; 32 id., 517; 14 Daly, 309; 109 N. Y., 81; 118 id., 90; 2 Dem., 298; 5 id., 257; 6 id., 269; 11 Abb. N. C., 419; 23 id., 116; 49 Super. Ct., 129; 51 id., 532; 53 id., 267; 56 id., 268; 57 id., 529; 10 Civ. Pro. R., 178; 17 id., 113, 119; 45 St. Rep., 825.

² 34 Hun, 602; 6 Civ. Pro. R., 348; 46 St. Rep., 275.

or more parties, united in interest and pleading together, by at least one of them, who is acquainted with the facts, except as follows:

1. Where the party is a domestic corporation, the verification must be made by an officer thereof.

2. Where the people of the state are, or a public officer in their behalf is, the party, the verification may be made by any person acquainted with the facts.

3. [*am'd 1879.*] Where the party is a foreign corporation, or where the party is not within the county where the attorney resides, or if the latter is not a resident of the state, the county where he has his office, and capable of making the affidavit or, if there are two or more parties united in interest, and pleading together, where neither of them, acquainted with the facts, is within that county, and capable of making the affidavit; or where the action or defense is founded upon a written instrument for the payment of money only, which is in the possession of the agent or the attorney; or where all the material allegations of the pleading are within the personal knowledge of the agent or the attorney; in either case, the verification may be made by the agent of, or the attorney for, the party.¹

§ 960. *Public or corporate seal may be stamped.*—[*am'd 1877.*] Where a seal of a public officer or of a corporation is authorized or required by law, it may be impressed directly on the paper.

§ 1650. *Action to compel the determination of a claim to real property; this article applies to corporations, or receivers.*—An action may be maintained, as prescribed in this article, by or against a corporation, *or by or against an unincorporated association*, as if it was a natural person, *or such an action may be maintained by or against the receiver or other successor of any such corporation or association.* [Amended by adding the italicized words. Laws of 1891, ch. 210.]

§ 1879. *Judgment creditors action; application of this article; what property cannot be reached.*—This article does not apply to a case, where the judgment debtor is a corporation, created by or under the laws of the state. Nor does it authorize the discovery or seizure of, or other interference with, any property, which is

¹ 2 St. Rep., 275; 12 id., 415; 13 Daly. 36, 204; 2 How. Pr., N. S., 120; 2 McC., 71; 41 Hun, 59; 2 Dem. 429; 7 Civ. Pro. R., 104, 443; 8 id., 453; 9 id., 185; 11 id., 1; 15 id., 256, 259; 45 St. Rep., 211.

expressly exempted by law from levy and sale, by virtue of an execution. * * *

§ 945. *Record of bill of sale, etc., of vessels.*—The record of a bill of sale, mortgage, hypothecation, or conveyance of a vessel, belonging to a port or place, within the United States, recorded in the office of the collector of customs, where the vessel is registered or enrolled, which was acknowledged or proved, before it was recorded, in like manner as a deed to be recorded within the State; or a transcript of such a record, duly certified by the collector; is evidence, with the like effect as the original.¹

§ 1948. *Action against the usurper of an office or franchise; Attorney-General may maintain action.*—The Attorney-General may maintain an action, upon his own information, or upon the complaint of a private person in either of the following cases:

1. Against a person who usurps, intrudes into, or unlawfully holds or exercises, within the State, a franchise, or a public office, civil or military, or an office in a domestic corporation.

2. Against a public officer, civil or military, who has done or suffered an act, which by law works a forfeiture of his office.

3. Against one or more persons who act as a corporation within the State, without being duly incorporated; or exercise, within the State, any corporate rights, privileges, or franchises, not granted to them by the law of the State.²

§ 1950. *Action triable by jury.*—An action, brought as prescribed in this article, is triable, of course and of right, by a jury, in like manner as if it was an action specified in section nine hundred and sixty-eight of this act, and without procuring an order, as prescribed in section nine hundred and seventy of this act.³

§ 1951. *Assumption of office by person entitled.*—Where final judgment is rendered, upon the right and in favor of the person so alleged to be entitled, he may, after taking the oath of office

¹ 10 Paige, 290; 60 Barb., 648; S. C., 4 Lans., 444; 73 N. Y., 384; 35 id., 361; 42 Hun, 637; 15 id., 70; 48 id., 557; 16 Abb. N. C., 9; 39 St. Rep., 483; 60 Hun, 480; 46 St. Rep., 34; 10 Paige, 290; 60 Barb., 648; S. C., 4 Lans., 444; 73 N. Y., 384; 35 id., 361; 1 Abb. N. C., 30; 17 Hun, 223; 70 N. Y., 270; 42 Super Ct., 150.

² 12 St. Rep., 328; 46 Hun, 370.

³ 27 Abb. N. C., 261; 33 St. Rep., 291; 122 N. Y., 197; 48 St. Rep., 697, 11 Abb. N. C., 64; 22 id., 211; 6 Civ. Pro. R., 406; 27 Hun, 528; 38 id., 236; 46 id., 324; 101 N. Y., 439; 10 St. Rep., 717; 21 St. Rep., 409; 67 N. Y., 334; 21 Alb. L. J., 433.

⁴ 6 Civ. Pro., 406; 57 N. Y., 161.

and giving an official bond, as prescribed by law, take upon himself the execution of the office. He must, immediately thereafter, demand of the defendant in the action, delivery of all the books and papers in the custody, or under the control, of the defendant, belonging to the office from which the defendant has been so excluded.¹

§ 1952. *Proceedings to obtain books and papers.*—If the defendant refuses or neglects to deliver any of the books or papers, demanded as prescribed in the last section, he is guilty of a misdemeanor; and the same proceedings must be taken to compel the delivery thereof, as are now or shall hereafter be prescribed by law, where a person, who has held an office, refuses or neglects to deliver the official books or papers to his successor.²

§ 1953. *Damages, how recovered.*—[am'd 1884.] Where final judgment has been rendered, upon the right and in favor of the person so alleged to be entitled, he may recover, by action against the defendant, the damages which he has sustained in consequence of the defendant's usurpation, intrusion into, unlawful holding, or exercise of the office.³

§ 1954. *One action against several persons.*—Where two or more persons claim to be entitled to the same office or franchise, the Attorney-General may bring the action against all to determine their respective rights thereto.

§ 1955. *When injunction may be granted.*—In an action, brought as prescribed in subdivision 3 of section 1948 of this act, the final judgment in favor of the plaintiff must perpetually restrain the defendant, or defendants, from the commission or continuance of the act, or acts, complained of. A temporary injunction to restrain the commission or continuance thereof may be granted, upon proof, by affidavit, that the defendant, or defendants, enjoined have acted as a corporation, within the State, without being duly incorporated, or have usurped, exercised, or claimed, within the State, a franchise, liberty, or corporate right, not granted to them by law. The provisions of title second of chapter seventh of this act apply to such a temporary injunction, and the proceedings thereupon, except where special provision is otherwise made in this title for that purpose, the injunction order is deemed to have been granted as prescribed in section 603 of this act.

¹ 6 Civ. Pro., 406; 73 N. Y., 535

² 21 Alb. L. J., 174.

³ 80 Hun, 484; 14 Abb. N. C., 31; 101 N. Y., 439.

§ 1956. *Final judgment in action for usurping office, etc.*—In any other action, brought as prescribed in this article, where a defendant is adjudged to be guilty of usurping or intruding into, or unlawfully holding or exercising, an office, franchise, or privilege, final judgment must be rendered, ousting and excluding him therefrom, and in favor of the people or the relator, as the case requires, for the costs of the action. As a part of the final judgment, the court may, in its discretion, also award that the defendant, or, where there are two or more defendants, that one or more of them pay to the people a fine, not exceeding two thousand dollars. The judgment for the fine may be docketed, and execution may be issued thereupon, in favor of the people, as if it had been rendered in an action to recover the fine. The fine, when collected, must be paid into the treasury of the state.¹

§ 1983. *Scire facias, quo warranto, etc., abolished.*—The writ of *scire facias*, the writ of *quo warranto*, and proceedings by information in the nature of *quo warranto*, have been abolished. The relief, formerly obtained by means of either of those writs, may be obtained by action, where an appropriate action therefor is prescribed in this act.²

§ 1984. *Actions to be brought in the name of the people.*—An action, brought as prescribed in this title, except an action to recover a penalty or forfeiture, expressly given by law to a particular officer, must be brought in the name of the people of the State; and the proceedings therein are the same as in an action by a private person, except as otherwise specially prescribed in this chapter.³

§ 1987. *Costs; how collected against corporation and usurpers of franchise.*—Where final judgment in an action, brought as prescribed in this title, is rendered against a corporation, or persons claiming to be a corporation, the court may direct the costs to be collected by execution against any of the persons claiming to be a corporation: or by warrant of attachment, or other process, against the person of any director or other officer of the corporation.

§ 2146. *Certiorari; "body" or "officer;" "determination;" what they include.*—The expression, "body or officer," as used in this article, includes every court, tribunal, board, corporation, or other

¹ 2 McC., 264; 25 Abb. N. C., 258; 10 St. Rep., 717; 20 Civ. Pro. R., 195; 21 Civ. Pro., 159; 37 St. Rep., 603.

² 38 Hun, 236. 26 Abb. N. C., 420.

³ 40 Hun, 316; 101 N. Y., 439; 48 St. Rep., 697.

person, or aggregation of persons, whose determination may be reviewed by a writ of *certiorari*; and the word "determination," as used in this article, includes every judgment, order, decision, adjudication, or other act of such a body or officer, which is subject to be so reviewed.

§ 3268. *When defendant may require security for costs.*—The defendant, in an action brought in a court of record, may require security for costs to be given, as prescribed in this title, where the plaintiff was, when the action was commenced,¹ either a foreign corporation.

§ 3269. *Id.; after action commenced.*—The defendant, in an action, may require security for costs to be given, where, after the commencement of the action, the plaintiff either

1. Ceases to be a resident of the State; or, where the action is brought in either of the local courts specified in subdivision first of the last section, ceases to be a resident of the city or county, as the case may be, wherein the court was located.²

§ 2463. [*am'd 1886.*] *Supplemental proceedings; cases where this chapter is not applicable; what property cannot be reached.*—This article does not apply where the judgment debtor is a corporation created by or under the laws of the State, or a foreign corporation specified in section one thousand eight hundred and twelve of this act, except in those actions or special proceedings brought by or against the people of the State. * * *

§ 2526. *Citation; service upon a corporation, infant, lunatic, etc*—Service of a citation must be made upon an infant under the age of fourteen years, a person judicially declared to be incompetent to manage his affairs by reason of lunacy, idiocy, or habi-

¹ 1 Civ. Pro. R., 15, 26, 231; 2 id., 375; 3 id., 38, 428; 4 id., 76, 79, 80, 84, 104, 105; 5 id., 155, 379; 6 id., 156, 371; 7 id., 200, 320; 8 id., 138; 13 id., 343; 14 id., 114; 15 id., 114, 237, 239; 16 id., 270, 320; 18 id., 324; 46 Hun, 580; 48 id., 350; 50 id., 270; 11 N. Y., 310; 20 Civ. Pro. R., 223; 37 St. Rep., 261; 39 id., 184; 1 id., 708; 16 id., 787; 17 id., 295; 19 id., 171; 20 id., 749; 22 id., 438; 24 id., 120; 27 id., 51; 19 Abb. N. C., 394, 395; 20 id., 290; 21 id., 93; 22 id., 446; 63 How. Pr., 377; 1 How. Pr. N. S., 146; 49 Super. Ct., 95; 53 id., 530; 2 Sandf., 633; 4 Abb. N. C., 224; 5 id., 356; 7 Daly, 258; 42 St. Rep., 11; 44 id., 834.

² 46 Hun, 580; 17 St. Rep., 859; 24 id., 120; 22 Abb. N. C., 446; 1 Civ. Pro. R., 15, 26; 4 id., 104; 6 id., 156; 13 id., 343; 15 id., 114, 237, 239, 241; 16 id., 320; 46 St. Rep., 275.

³ 14 St. Rep., 596; 47 Hun, 350; 29 id., 96; 4 id., 255; 10 id., 210; 11 id., 108; 13 id., 155; 18 id., 200; 20 id., 274, 276, 402; 39 St. Rep., 195, 488; 60 Hun, 480.

tual drunkenness, or a corporation, in the manner prescribed for personal service of a summons upon such a person, or upon a corporation, in article first of title first of chapter fifth of this act.¹

3343. *Miscellaneous, general definitions and rules of construction.*—In construing this act, the following rules must be observed, except where a contrary intent is expressly declared in the provision construed, or plainly apparent from the context thereof:²

1. The “superior city courts” are, collectively, the court of common pleas for the city and county of New York, the superior court of the city of New York, the superior court of Buffalo, and the city court of Brooklyn.³

2. The word “mandate” includes a writ, process, or other written direction, issued pursuant to law out of a court, or made pursuant to law by a court, or a judge, or a person acting as a judicial officer, and commanding a court, board, or other body, or an officer, or other person, named or otherwise designated therein, to do, or to refrain from doing, an act therein specified.⁴

3. The word “judge” includes a justice, surrogate, recorder, justice of the peace, or other judicial officer, authorized or required to act, or prohibited from acting, in or with respect to the matter or thing referred to in the provision wherein that word is used.⁵

4. The word “clerk” signifies the clerk of the court wherein the action or special proceeding is brought, or wherein, or by whose authority, the act is to be done, which is referred to in the provision in which it is used. If the action or special proceeding is brought, or the act is to be done, in or by the authority of the supreme court, it signifies the clerk of the county wherein the action or special proceeding is triable, or the act is to be done.

5. The word “report,” when used in connection with a trial, or other inquiry, or a judgment, means a referee’s report; and the word “decision,” when used in the same connection, means

¹ 17 St. Rep., 580.

² 42 St. Rep., 195, 660; 47 id., 877; 90 N. Y., 571; 117 id., 302; 11 Abb. N. C., 175; 24 id., 304; 2 McC., 196; 52 Super. Ct., 237; 1 Civ. Pro. R., 484; 2 id., 330; 4 id., 79; 9 id., 249; 15 id., 250, 434; 63 How. Pr., 491; 2 How. Pr. N. S., 45; 3 id., 172; 41 Hun, 11, 534, 601; 57 Hun, 543; 2 Dem., 396; 3 St. Rep., 253; 4 id., 33; 24 id., 738; 27 id., 335, 680; 29 id., 230, 319; 32 id., 10, 175, 1017; 20 Civ. Pro., 37, 209; 33 St. Rep., 187; 34 id., 493, 775; 35 id., 180, 542.

³ 15 Daly, 41.

⁴ 22 Abb. N. C., 65.

⁵ 57 Hun, 66.

the decision of the court upon a hearing, or the trial of an issue, before the court without a jury.

6. The words "real property" are co-extensive with lands, tenements, and hereditaments.

7. The words "personal property" include money, chattels, things in action, and evidences of debt. The word "chattel" is co-extensive with goods and chattels.¹

8. The word "property" includes real and personal property.

9. A "personal injury" includes libel, slander, criminal conversation, seduction, and malicious prosecution; also an assault, battery, false imprisonment, or other actionable injury to the person either of the plaintiff, or of another.²

10. An "injury to property" is an actionable act, whereby the estate of another is lessened, other than a personal injury, or the breach of a contract.³

11. The word "affidavit" includes a verified pleading in an action, or a verified petition or answer in a special proceeding.

12. A warrant of attachment against property is said to be "annulled" when the action in which it was granted abates or is discontinued; or a final judgment, rendered therein in favor of the plaintiff, is fully paid; or a final judgment is rendered therein in favor of the defendant. But, in the case last specified, a stay of proceedings suspends the effect of the annulment, and the reversal or vacating of the judgment revives the warrant.

13. The term "judgment creditor" signifies the person who is entitled to collect, or otherwise enforce, in his own right, a judgment for a sum of money, or directing the payment of a sum of money.

14. A "judgment creditor's action" is an action brought as prescribed in article first of title four of chapter sixteenth of this act, or any other action, brought by a judgment creditor to aid the collection of a judgment for a sum of money, or directing the payment of a sum of money.

15. The words "lunacy" and "lunatic" embrace every description of unsoundness of mind, except idiocy.

16. A "distinct parcel" of real property is a part of the property, which is or may be set off by boundary lines, as distinguished from an undivided share or interest therein.

¹ 125 N. Y., 387; 53 Super. Ct., 346; 55 Hun, 368; 57 id., 542.

² 42 Hun, 332; 14 Daly, 450; 112 N. Y., 559; 15 St. Rep., 361.

³ 20 Civ. Pro. R., 36; 15 Daly, 454; 48 St. Rep., 151.

17. The word "territory," when applied to a portion of the United States, without the State, includes the District of Columbia.

18. A "domestic corporation" is a corporation created by or under the laws of the State; or located in the State, and created by or under the laws of the United States, or by, or pursuant to, the laws in force in the colony of New York before the 19th day of April, in the year 1775. Every other corporation is a "foreign corporation."¹

19. The terms "trial juror" and "trial jury" are respectively equivalent to the terms "petit juror" and "petit jury," as used in the constitution and laws of the State. * * *

20. The word "action" refers to a civil action; the word "judgment," to a judgment in such an action; the term "special proceeding," to a civil special proceeding; the word "order," to an order made in such an action to recover the immediate possession of real property.²

21. The term "public holiday" includes each of the following days, to wit: the first day of January; the twenty-second day of February; the thirtieth day of May; the fourth day of July; the twenty-fifth day of December; unless either of those days falls upon Sunday, and in that case the next day thereafter; also each general election day; and each day appointed by the President of the United States or the Governor of the State as a day of general thanksgiving, general fasting and prayer, or other general religious observance.^{3*}

22. Each of the words, "now," "heretofore," and "hereafter," refers to the time when the provision containing it takes effect.

23. Where an instrument, specified in this act, is described as, or expressly required to be, written or printed, it may be partly written and partly printed.

24. The word "folio" signifies one hundred words, counting as a word each figure necessarily employed.

¹ 11 Civ. Pro. R., 61; 18 id., 380; 13 Daly, 510; 46 St. Rep., 185, 275, 895; 23 id., 462; 56 Hun, 607.

² 18 St. Rep., 797; 42 Hun, 164, 608; 44 id., 200; 19 Civ. Pro. R., 421.

³ 18 Civ. Pro. R., 372.

* NOTE.—The first Monday of September, "Labor Day," is a holiday; and every Saturday a half-holiday, as respects the maturity, etc., of bills and notes. Laws of 1887, ch. 289. See, also, Laws of 1887, ch. 461, and 1889, ch. 198.

CHAPTER VIII.

THE PENAL CODE AND THE CODE OF CRIMINAL PROCEDURE

PROVISIONS APPLICABLE TO CORPORATIONS.

A. THE PENAL CODE.

I. MISCONDUCT OF OFFICIALS AND EMPLOYEES OF CORPORATIONS; REGULATION OF APPLIANCES.

SECTION 13. Punishment, how determined.

718. Construction.

416. Unlawful offers to railroad commissioners or their employees.

417. Misconduct of railroad commissioners and of their employees.

418. Persons unable to read not to act or be employed as engineers.

419. Misconduct of officials or employees of elevated railroads.

420. Intoxication or other misconduct of railroad or steamboat employee.

421. Duties of locomotive engineers.

422. Placing other cars before passenger cars.

423. Platforms and heating apparatus of passenger car.

424. Guard posts; automatic couplers.

424. Other violation of duty by officers, agents or servants of railroad companies.

425. Officers of railroad companies to be uniformed.

II. FRAUDULENT ACTS BY CORPORATIONS AND THEIR OFFICERS AND MEMBERS.

SECTION 590. Frauds in the organization of corporations.

591. Fraudulent issue of stock, script, etc.

592. Frauds in procuring organization of corporation, etc.

593. Acting for foreign corporations not authorized to do business in this state.

594. Misconduct of directors of stock corporations.

602. Frauds in keeping accounts.

603. Misconduct of directors of moneyed corporations.

604. Insolvencies of corporation deemed fraudulent when.

605. Unlawful discount of bills of foreign banks.

606. Violation of duty of directors of moneyed corporations.

518. Officers of corporation selling shares, etc., when a misdemeanor.

519. Falsely indicating person as corporate officer.

541. Conversion by trustee, larceny; how punished.

609. Directors of corporation presumed to have knowledge.

610. Misconduct of officers and directors of stock corporations.

611. Misconduct of officers and employees of corporations.

612. Misconduct of officers and agents of pipe-line corporations.

613. Misconduct at corporate elections.

SECTION 614. Presumption of knowledge of corporate condition.

586. Fraudulent conveyances.

III. FRAUDULENT ISSUE OR SALE OF DOCUMENTS OF TITLE TO MERCHANDISE.

SECTION 628. Issuing fictitious certificates by pipe-line corporations.

629. Issuing fictitious bills of lading, receipts and vouchers.

630. Erroneous bills of lading or receipts issued in good faith excepted.

631. Duplicate receipts must be marked "duplicate."

632. Selling, hypothecating or pledging property received for transportation or storage.

633. Bill of lading or receipt issued by warehouseman must be canceled on redelivery of the property.

634. Property demanded by process of law.

437. Destroying invoice.

IV. PASSAGE TICKETS; REGULATION AND SALE OF, ETC.

616. Sales by authorized agents restricted.

617. Unauthorized persons forbidden to sell certificates, receipts, etc. for the purpose of procuring tickets.

618. Punishment for fraud on accounts, etc.

619. Conspiracy to sell passage tickets in violation of law.

620. Conspirators may be indicted, though object not accomplished.

621. Offices for unlawful sales of passage tickets are disorderly houses.

622. Owners, pursers, etc., allowed to sell tickets.

623. Station masters, conductors, etc., allowed to sell tickets.

624. What must be stated on passage tickets.

626. Sales of passage tickets at excessive rates.

627. "Company" defined.

536. Completed unissued instruments of property.

546. Value of, how ascertained.

V. FORGERY.

509. Forgery in first degree defined.

510. Id.; false certificate to certain instruments.

511. Id.; in second degree.

512. Qualification of last section.

513. Other cases of forgery in second degree.

514. Other cases of forgery in third degree.

515. Same.

516. Forging passage tickets.

518. Officer of corporation selling, etc., shares.

519. Falsely indicating person as corporate officer.

520. Terms "forge" and "forging" generally defined.

521. Uttering, etc., forged instruments, etc., is forgery.

522. Uttering writing signed with wrongdoer's name.

364. Offenses against trade-marks.

367. "Affixing" defined.

VI. REGULATIONS CONCERNING NAVIGATION; HEALTH AND SAFETY.

SECTION 440. Master of vessel bringing foreign convict.

444. Interfering with navigation.

SECTION 538. Keeping wrecked goods a misdemeanor.

- 540. Bringing stolen goods into State, larceny.
- 359. Overloading passenger vessel.
- 576. Fitting out or lading any vessel, with intent to wreck the same.
- 372. Defacing marks upon wrecked property.
- 374. Officer unlawfully detaining wrecked property.
- 415. Ferries.
- 428. Fires and lights, or vessels in certain counties.
- 417. Violating condition of recognizance to keep a ferry.
- 350. Masters to suppress gambling on board their vessels.
- 391. Violation of quarantine laws by master of vessel.
- 392. Giving false information relative to vessel, or permitting person to land before visit of health officers.
- 393. Landing from vessel before visit of health officers.
- 394. Going on board vessel at quarantine grounds, etc.
- 396. Obstructing health officer in performance of his duty.
- 398. Unlicensed piloting.
- 399. Coasting steamers excepted.
- 434. Exposing persons affected with a contagious disease in public places.

VII. INJURIES TO PROPERTY; NUISANCE.

- 654. Injuries to property, or interfering with railroad property; how punished.
- 635. Injuries to railroad tracks, etc.
- 639. Injuring pier, sea wall, dock, lock, buoy, pipe, main, sewer, telegraph, etc.
- 651. Unlawful interference with gas meter or steam valve.
- 389. Keeping gun powder, etc.
- 390. Throwing gas tar, etc., into public waters.
- 654. Endangering life by maliciously placing explosive near building.

VIII. DANGEROUS USE OF MACHINERY; HOMICIDE.

- 360. Unauthorized pressure of steam.
- 361. Generation of unsafe amount of steam.
- 362. Mismanagement of steam boilers.
- 195. By negligent use of machinery.
- 197. Killing by overloading passenger vessel.
- 198. Liability of persons in charge of steamboats.
- 199. Liability of persons in charge of steam engines.

IX. ARSON.

- 486. Arson in first degree defined.
- 487. Id.; second degree.
- 488. Id.; in third degree.
- 492. "Night-time" defined.
- 493. "Building" defined.
- 637. Burning certain property, how punished.

X. BURGLARY.

- 498. Burglary in third degree.
- 499. "Break" defined.

- SECTION 500. "Night-time" defined.
 501. "Enter" defined.
 502. "Dwelling-house" defined.
 504. "Building" defined.

XI. REGULATIONS CONCERNING ANIMALS.

663. Transporting animals for more than twenty-four consecutive hours a misdemeanor.
 659. Carrying animals in a cruel manner, a misdemeanor.
 196. Owner of animals.
 655. Overdoing an animal; a failure to feed properly, a misdemeanor.
 669. Definitions.
 223. Ejection of passenger, when declared not unlawful.
 381. Carriers refusing to receive guests and passengers.
 383. Protection of civil and public rights.
 675. Relating to disorderly conduct or public conveyances.
 676. Acts committed out of the State.
 171. "A." Coercion by employees.
 292. Employments prohibited to children.
 641. Divulging, etc., telegram, a misdemeanor.
 642. Opening or publishing a sealed letter, etc.
 41t. Duress and intimidation of voters.
 254a. Furnishing libelous information.

B. THE CODE OF CRIMINAL PROCEDURE.

56. Courts of special sessions, jurisdiction of.
 137. Of crime committed in the State on board of any railway train.
 335. Plea of guilty, how put in.
 675. Summons upon an information or presentment against a corporation, by whom issued, and when returnable.
 676. Form of the summons.
 667. When, and how served.
 678. Examination of the charge.
 682. Fine on conviction, how collected.
 679. Certificate of the magistrate, and return thereof, with depositions.
 680. Grand jury may proceed as in the case of a natural person.
 681. Appearance and plea to indictment, and proceedings thereon.

I. MISCONDUCT OF OFFICIALS AND EMPLOYEES OF CORPORATIONS; REGULATION OF APPLIANCES.

§ 13. *Punishment, how determined.*—Whenever in this Code the punishment for a crime is left undetermined between certain limits, the punishment to be inflicted in a particular case must be determined by the court authorized to pass sentence, within such limits as may be prescribed by this Code. In all cases where a corporation is convicted of an offense for the commission of which a natural person would be punishable with imprisonment, as for a felony, such corporation is punishable by a fine of not more than five thousand dollars. (*Penal Code as am'd, 1892.*)

§ 718. *Construction of forms.*—In construing this Code, or an indictment or other pleading in a case provided for by this Code, the following rules must be observed, except where a contrary intent is plainly declared in the provision to be construed, or plainly apparent from the context thereof.

1. Each of the terms “neglect,” “negligence,” “negligent,” and “negligently” imports a want of such attention to the nature or probable consequence of the act or omission as a prudent man ordinarily bestows in acting in his own concerns;

2. Each of the terms “corrupt” and “corruptly” imports a wrongful desire to acquire or cause some pecuniary or other advantage to or by the person guilty of the act or omission referred to, or some other person;

3. Each of the terms “malice” and “maliciously” imports an evil intent, or wish or design to vex, annoy, or injure another person, or to maltreat or injure an animal;

4. The term “knowingly” imports a knowledge that the facts exist which constitute the act or omission a crime, and does not require knowledge of the unlawfulness of the act or omission;

5. Where an intent to defraud constitutes a part of a crime, it is not necessary to aver or prove an intent to defraud any particular person;

6. The term “vessel” includes ships, steamers, canal boats, and every boat or structure adapted to navigation, or movement from place to place by water, either upon the ocean, lakes, rivers, or artificial waterways;

7. The term “signature” includes any memorandum, mark, or sign, written with intent to authenticate any instrument, or writing, or the subscription of any person thereto;

8. The term “writing” includes both printing and writing;

9. The term “property” includes both real and personal property, things in action, money, bank bills, and all articles of value;

10. The single number includes the plural and the plural the singular;

11. A word used in the masculine gender comprehends as well the feminine and neuter;

12. A word used in the present tense includes the future;

13. The term “person” include a corporation or joint association as well as a natural person. When it is used to designate a party whose property may be the subject of any offense, it also includes the state, or any other state, government or county which

may lawfully own property within the state.¹ (*As am'd, Laws of 1892.*)

14. The term "real property" includes every estate, interest and right in lands, tenements and hereditaments ;

15. The term "personal property" includes every description of money, goods, chattels, effects, evidences of rights in action, and all written instruments by which any pecuniary obligation, right or title to property, real or personal, is created, acknowledged, transferred, increased, discharged or diminished, and every right and interest therein.

§ 416. *Unlawful offers to railroad commissioners or their employes.*—Any officer, agent or attorney of a railroad corporation who offers a place, appointment, position or any other consideration to a railroad commission, or to a secretary, clerk, agent, employe or expert employed by the board of railroad commissioners, is guilty of a misdemeanor.

§ 417. *Misconduct of railroad commissioners and of their employes.*—Any railroad commissioner, or any secretary, clerk, agent, expert or other person employed by the board of railroad commissioners, who :

1. Directly or indirectly solicits or requests from or recommends to any railroad corporation, or to any officer, attorney or agent thereof, the appointment of any person to any place or position ; or,

2. Accepts, receives or requests, either for himself or for any other person, any pass, gift or gratuity from any railroad corporation ; or,

3. Secretly reveals to any railroad corporation, or to any officer, member, or employe thereof, any information gained by him from any other railroad corporation ;

Is guilty of a misdemeanor.

§ 418. *Persons unable to read not to act or be employed as engineers.*—Any person unable to read the time-tables of a railroad and ordinary handwriting, who acts as an engineer or runs a locomotive or train on any railroad in this state ; or any person who in his own behalf, or in behalf of any other person or corporation, knowingly employs a person so unable to read to act as such engineer or to run any such locomotive, is guilty of a misdemeanor.

¹ 4 N. Y. Crim., 265; 21 St. Rep., 118; 59 Hun, 57; 35 St. Rep., 154; 41 id. 660, 666.

§ 419. *Misconduct of officials or employes on elevated railroad.*—Any conductor, brakeman, or other agent or employe of an elevated railroad, who:

1. Starts any train or cars of such railroad, or gives any signal or order to any engineer or other person to start any such train or car, before every passenger therein who manifests an intention to depart therefrom by arising, or moving toward the exit thereof, has departed therefrom; or before every passenger on the platform or station at which the train has stopped, who manifests a desire to enter the train, has actually boarded or entered the same, unless due notice is given by an authorized employe of such railroad that the train is full, and that no more passengers can then be received; or,

2. Obstructs the lawful ingress or egress of a passenger to or from any such car; or,

3. Opens a platform gate of any such car while the train is in motion, or starts such train before such gate is firmly closed;

Is guilty of a misdemeanor. (As amended, 1892, chap. 692.)

§ 420. *Intoxication or other misconduct of railroad or steamboat employes.*—1. Any person who, being employed upon any railway as engineer, conductor, baggagemaster, brakeman, switchtender, fireman, bridge-tender, flagman, signal man, or having charge of stations, starting, regulating or running trains upon a railroad, or, being employed as captain, engineer or other officer of a vessel propelled by steam, is intoxicated while engaged in the discharge of any such duties; or,

2. An engineer, conductor, brakeman, switch-tender, or other officer, agent or employe of any railroad corporation, who willfully violates or omits his duty as such officer, agent or employe, by which human life or safety is endangered, the punishment of which is not otherwise prescribed;

Is guilty of a misdemeanor. (As am'd, Laws of 1892, ch. 692.)

§ 421. *Duties of locomotive engineers.*—A person acting as engineer, driving a locomotive on any railway in this state, who fails to ring the bell, or sound the whistle, upon such locomotive, or cause the same to be rung or sounded, at least eighty rods from any place where such railway crosses a travelled road or street on the same level (except in cities), or to continue the ringing such bell or sounding such whistle at intervals, until such locomotive, and the train to which the locomotive is attached, shall have completely crossed such road or street, or

any officer of a corporation who shall willfully obstruct, or cause to be obstructed, any farm or highway crossing with any locomotive or car for a longer period than five consecutive minutes, is guilty of a misdemeanor.¹ (*As am'd*, 1892.)

§ 422. *Placing other cars before passenger cars.*—A person being an officer or employee of a railway company, who knowingly places, directs, or suffers a freight, lumber, merchandise or oil car to be placed in rear of a car used for the conveyance of passengers in a railway train, is guilty of a misdemeanor. (*As amended* in 1889.)

§ 423. *Platforms and heating apparatus of passenger cars.*—A railroad corporation, or any officer or director thereof having charge of its railroad, or any person managing a railroad in this state, or any person or corporation running passenger cars upon a railroad into or through this state, who :

1. Fails to have the platforms or ends of the passenger cars run upon such railroad constructed in such manner as will prevent passengers falling between the cars when in motion ; or,

2. Except temporarily, in case of accident or emergency, heats any passenger car, while in motion, on any such railroad more than fifty miles in length, except a narrow-guage railroad which runs only mixed trains, between October fifteenth and May first, by any stove or furnace inside of or suspended from such car, except stoves of a pattern and kind approved by the board of railroad commissioners for cooking purposes in dining-room cars, and except within the extended time allowed by the railroad commissioners in pursuance of law for introducing other heating apparatus ;

Is guilty of a misdemeanor. (*As amended*, Laws 1892, ch. 692.)

§ 424. *Guard posts ; automatic couplers.*—All corporations and persons other than employees, operating any steam railroad in this state,

1. Failing to cause guard posts to be placed in the prolongation of the line of bridge trusses upon such railroad, so that in case of derailment, the posts and not the trusses shall receive the blow of the derailed locomotive or car ; or,

2. Failing after November 1st, 1892, to equip all of their own engines and freight cars, run and used in freight or other trains on

¹ 1 St. Rep., 421.

such railroad, with automatic self-couplers, or running or operating on such railroad any freight car belonging to any such person or corporation, without having the same equipped, except in case of accident or other emergency, with automatic self-couplers, and except within the extended time allowed by the board of railroad commissioners, in pursuance of law, for equipping such car with such coupler ;

Is guilty of a misdemeanor, punishable by a fine of five hundred dollars for each offense. (As amended, Laws 1892, ch. 692.)

§ 424. **Other violation of duty by officers, agents or servants of railroad companies.*—An engineer, conductor, brakeman, switch-tender, or other officer, agent or servant of any railway company who is guilty of any willful violation or omission of his duty as such officer, agent or servant, by which humane life or safety is endangered, the punishment of which is not otherwise prescribed, is guilty of a misdemeanor.

§ 425. *Officers of railroad companies to be uniformed.*—A person who,

1. Advises or induces anyone, being an officer, agent or employe of a railway company, to leave the service of such company because it requires a uniform to be worn by such officer, agent or employe, or to refuse to wear such uniform, or any part thereof ; or

2. Uses any inducement with a person employed by a railway company to go into the service or employment of any other railway company because a uniform is required to be worn ; or

3. Wears the uniform designated by a railway company without authority ;

Is guilty of a misdemeanor.¹

§ 426. *Riding on freight trains.*—A person who rides on any engine, or any freight car or wood car of any railway company without authority or permission of the proper officers of the company, or of the person in charge of the said car or engine ; or

2. Who gets on any car or train while in motion for the purpose of obtaining transportation thereon as a passenger ; or

3. Who willfully obstructs, hinders or delays the passage of any car lawfully running upon any steam or horse, or street railway, is guilty of a misdemeanor. (As amended in 1892.)²

* NOTE.—This seems to be in force, although the preceding section numbered 424 was amended in 1892, ch. 692.

¹ 6 Crim. Rep., 259.

² 6 Crim. Rep., 259.

II. FRAUDULENT ACTS BY CORPORATIONS AND THEIR OFFICERS
AND MEMBERS.

§ 590. *Frauds in the organization of corporations.*—A person who:

1. Without authority subscribes the name of another to or inserts the name of another in any prospectus, circular or other advertisement or announcement of any corporation or joint stock association existing or intended to be formed, with intent to permit the same to be published, and thereby to lead persons to believe that the person whose name is so subscribed is an officer, agent, member or promoter of such corporation or association; or,
2. Signs the name of a fictitious person to any subscription for or agreement to take stock in any corporation, existing or proposed; or,
3. Signs to any such subscription or agreement the name of any person, knowing that such person does not intend in good faith to comply with the terms thereof, or under any understanding or agreement, that the terms of such subscription or agreement are not to be compiled with or enforced;

Is guilty of a misdemeanor. (As amended, Laws of 1892, ch. 692, substitute for Penal Code, §§ 590 and 593.)

§ 591. *Fraudulent issue of stock, script, etc.*—An, officer, agent, or other person in the service of any joint stock company or corporation formed or existing under the laws of this state, or of the United States, or of any state or territory thereof, or of any foreign government or country, who willfully and knowingly, with intent to defraud, either:

1. Sells, pledges or issues, or causes to be sold, pledged or issued, or signs or executes, or causes to be signed or executed with intent to sell, pledges or issues, or causes to be sold, pledged or issued, any certificate or instrument purporting to be a certificate or evidence of the ownership of any share or shares of such company or corporation, or any bond or evidence of debt, or writing purporting to be a bond or evidence of debt of such company or corporation, without being first thereto duly authorized by such company or corporation, or contrary to the charter or laws under which such corporation or company exists, or in excess of the power of such company or corporation or of the limit imposed by law or otherwise upon its power to create or issue stock or evidence of debt; or,

2. Reissues, sells, pledges or disposes of, or causes to be reissued, sold, pledged or disposed of, any surrendered or canceled certificates, or other evidence of the transfer or ownership of any such share or shares, is punishable by imprisonment for [a term not exceeding] seven years, or by a fine not exceeding three thousand dollars, or by both. (As amended, Laws of 1892, ch. 662.)

§ 592. *Frauds in procuring organization, corporation, etc.*—An officer, agent or clerk of a corporation, or of persons proposing to organize a corporation, or to increase the capital stock of a corporation, who knowingly exhibits a false, forged or altered book, paper, voucher, security or other instrument of evidence to any public officer or board authorized by law to examine the organization of such corporation, or to investigate its affairs, or to allow an increase of its capital with intent to deceive such officer or board in respect thereto, is punishable by imprisonment in a state prison not exceeding ten years. (As amended, Laws of 1892, ch. 662.)

§ 593. *Acting for foreign corporations not authorized to do business in this state.*—Any person or corporation who acts as agent or representative of any mortgage company or co-operative loan and building association organized outside of this state, while such mortgage company or co-operative loan and building association shall not be authorized under a license of the superintendent of banks to do business in this state, is guilty of a misdemeanor. (As amended by Laws 1892, ch. 692. See Laws 1890, ch. 146, § 9; Laws 1890, ch. 596, § 4.)

§ 594. *Misconduct of directors of stock corporations.*—A director of a stock corporation, who concurs in any vote or act of the directors of such corporation, or any of them, by which it is intended,

1. To make a dividend, except from the surplus profits arising from the business of the corporation, and in the case and manner allowed by law; or

2. To divide, withdraw, or in any manner pay to the stockholders, or any of them, any part of the capital stock of the corporation; or to reduce such capital stock without the consent of the legislature; or

3. To discount or receive any note or other evidence of debt in payment of an installment of capital stock actually called in, and required to be paid, or with intent to provide the means of making such payment; or

4. To receive or discount any note or other evidence of debt with intent to enable any stockholder to withdraw any part of the money paid in by him on his stock ; or

5. To apply any portion of the funds of such corporation, except surplus profits, directly or indirectly, to the purchase of its own stock ; or

6. To receive any such shares in payment or satisfaction of a debt due to such corporation ; or

7. To receive in exchange for the shares, notes, bonds or other evidences of debt of such corporation, shares of the capital stock, notes, bonds or other evidences of debt issued by any other stock corporation engaged in another line of business, unless authorized by law to make such exchange.¹ (As amended by Laws 1892, ch. 692.)

§ 602. *Frauds in keeping accounts.*—A director, officer or agent of any corporation or joint-stock association, who knowingly receives or possesses himself of any property of such corporation or association, otherwise than in payment of a just demand, and with intent to defraud, omits to make, or cause or direct to be made, a full and true entry thereof in the books or accounts of such corporation or association ; and a director, officer, agent or member of any corporation or joint-stock association who, with intent to defraud, destroys, alters, mutilates, or falsifies any of the books, papers, writings or securities belonging to such corporation or association, or makes or concurs in making any false entry, or omits or concurs in omitting to make any material entry in any books of accounts, or other record or document kept by said corporation or association, is punishable by imprisonment in a state prison not exceeding ten years, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment. (As amended by Laws 1882, ch. 662, seems to be amended by ch. 692, Laws 1892.)

§ 603. *Misconduct by directors of monied corporations.*—Every director of a monied corporation who :

1. In case of the fraudulent insolvency of such corporation shall have participated in such fraud ; or,

2. Willfully does any act as such director which is expressly forbidden by law, or willfully omits to perform any duty imposed upon him as such director by law ;

¹ 48 St. Rep., 577.

Is guilty of a misdemeanor, if no other punishment is prescribed therefor by law.

The insolvency of a monied corporation is deemed fraudulent unless its affairs appear upon investigation to have been administered fairly, legally and with the same care and diligence that agents receiving a compensation for their services are bound, by law, to observe. (As amended, Laws 1892, ch. 662.)

§ 603. **Officer of corporation publishing false reports of its condition.*—A director, officer or agent of any corporation or joint-stock association, who knowingly concurs in making or publishing any written report, exhibit or statement of its affairs or pecuniary condition, containing any material statement which is false, other than such as are elsewhere by this Code specially made punishable, is guilty of a misdemeanor.

6 Abb. Pr., 247; 18 id., 234.

§ 604. *Insolvencies of corporations deemed fraudulent, when.*—The insolvency of a monied corporation is deemed fraudulent unless its affairs appear, upon investigation, to have been administered fairly, legally, and with the same care and diligence that agents receiving a compensation for their services are bound by law to observe.

§ 605. *Directors participating in fraudulent insolvency, how punishable.*—In every case of the fraudulent insolvency of a monied corporation every director thereof who participated in such fraud, if no other punishment is prescribed therefor by this Code, or any special statute, is guilty of a misdemeanor.

§ 605. *Unlawful discount of bills of foreign banks.*—Any person, association or corporation within the state who, directly or indirectly, on any pretense whatever, procures or receives, or offers to receive, from any corporation or person any bank bill or note or other evidence of debt in the similitude of a bank note issued, or purporting to have been issued, by any corporation or individual, situated or residing without this state, at a greater rate of discount than is or shall be at the time fixed by law for the redemption of the bills of the banks of this state at their agencies, is guilty of a misdemeanor. (As amended by Laws 1892, ch. 692. See R. S., 1540, Laws 1882, ch. 409, § 118.)

*These sections seem to be in force, although the other sections here inserted with the same number were enacted in 1892.

§ 606. *Violation of duty of directors of monied corporations.*—A director of any monied corporation who willfully does any act, as such director, which is expressly forbidden by law, or willfully omits to perform any duty expressly imposed upon him as such director by law, the punishment for which act or omission is not otherwise prescribed by this Code, or by some special statute, is guilty of a misdemeanor.

§ 518. *Officer of corporation selling, etc., shares, when a misdemeanor.*—An officer, agent, or other person employed by any company or corporation existing under the laws of this state, or of any other state or territory of the United States, or of any foreign government, who willfully and with a design to defraud, sells, pledges or issues, or causes to be sold, pledged or issued, or signs or procures to be signed with intent to sell, pledge or issue, or to be sold, pledged or issued, a false, forged or fraudulent paper, writing or instrument, being or purporting to be a scrip, certificate or other evidence of the ownership or transfer of any share or shares of the capital stock of such company or corporation, or a bond or other evidence of debt of such company or corporation, or a certificate or other evidence of the ownership or of the transfer of any such bond or other evidence of debt, is guilty of forgery in the third degree, and upon conviction, in addition to the punishment prescribed in this title for that offense, may also be sentenced to pay a fine not exceeding three thousand dollars.

§ 519. *Falsely indicating person as corporate officer.*—The false making or forging of an instrument or writing purporting to have been issued by or in behalf of a corporation or association, state or government, and bearing the pretended signature of any person, therein falsely indicated as an agent or officer of such corporation, is forgery in the same degree, as if that person were in truth such officer or agent of the corporation or association, state or government.

§ 541. *Conversion by trustee, larceny; how punished.*—A person acting as executor, administrator, committee, guardian, receiver, collector or trustee of any description, appointed by a deed, will, or other instrument, or by an order or judgment of a court or officer, who secretes, withholds, or otherwise appropriates to his own use, or that of any person other than the true owner, or person entitled thereto, any money, goods, thing in action, security, evidence of debt or of property, or other valuable thing, or any proceeds thereof, in his possession or custody by virtue of his

office, employment or appointment, is guilty of grand or petit larceny in such degree as is herein prescribed with reference to the amount of such property; and upon conviction, in addition to the punishment in this chapter prescribed for such larceny, may be adjudged to pay a fine not exceeding the value of the property so misappropriated or stolen, with interest thereon from the time of the misappropriation, withholding, or concealment, and twenty per centum thereupon in addition, and to be imprisoned for not more than five years in addition to the term of his sentence for larceny, according to this chapter, unless the fine is sooner paid.

§ 609. *Directors of corporation presumed to have knowledge.*—A director of a corporation or joint-stock association must be deemed to have such a knowledge of the affairs of the corporation or association as to enable him to determine whether any act, proceeding or omission of its directors is a violation of this chapter.

§ 610. *Misconduct of officers and directors of stock corporations.*—Any officer or director of a stock corporation who :

1. Issues, participates in issuing, or concurs in a vote to issue any increase of its capital stock beyond the amount of the capital stock thereof, duly authorized by or in pursuance of law; or,

2. Sells, or agrees to sell, or is directly or indirectly interested in the sale of any share of stock of such corporation, or in any agreement to sell the same, unless at the time of such sale or agreement he is an actual owner of such share;

Is guilty of a misdemeanor, punishable by imprisonment for not less than six months or by a fine not exceeding five thousand dollars or by both. (As amended, Laws of 1892, ch. 692. See R. S., 1740; Laws 1850, ch. 140, § 9; Laws 1889, ch. 426; id., 1727; Laws 1884, ch. 223.)

§ 611. *Misconduct of officers and employes of stock corporations.*—A director, officer, agent or employe of any corporation or joint-stock association who :

1. Knowingly receives or possesses himself of any of its property otherwise than in payment for a just demand, and with intent to defraud, omits to make or to cause or direct to be made a full and true entry thereof in its books and accounts; or,

2. Concurs in omitting to make any material entry thereof; or,

3. Knowingly concurs in making or publishing any written report, exhibit or statement of its affairs or pecuniary condition, containing any material statement which is false; or,

4. Having the custody or control of its books, willfully refuses or neglects to allow the same to be inspected and extracts to be taken therefrom by any person entitled by law to inspect the same or to take extracts therefrom ; or,

5. If a notice of an application for an injunction affecting the property or business of such joint-stock association or corporation is served upon him omits to disclose the fact of such service and the time and place of such application to the other directors, officers and managers thereof ; or,

6. Refuses or neglects to make any report or statement lawfully required by a public officer ;

Is guilty of a misdemeanor. (As amended by Laws 1892, ch. 692. See Penal Code, §§ 602-3 ; see, also, § 515 ; R. S., 1486, Laws 1847, ch. 210, § 43 ; id., 1869, Laws 1848, ch. 40, § 25 ; id., 1995, Laws 1853, ch. 117, § 25 ; id., 2003, Laws 1874, ch. 143, § 14 ; id., 1983 ; Laws 1875, ch. 611, § 17 ; id., 1842, Laws 1882, ch. 353, § 7 ; id., 1543, Laws 1882, ch. 409, § 128.)

§ 612. *Misconduct of officers and agents of pipe-line corporations.*

—Any officer, agent or manager of a pipe-line corporation who :

1. Neglects or refuses to transport any product delivered for transportation, or to accept and allow a delivery thereof in the order of application, according to the general rules of the corporation, as provided by law ; or,

2. Charges, accepts, or agrees to accept, for such receipt, transportation and delivery a sum different from the amount fixed by such regulations ; or,

3. Allows or pays, or agrees to allow or pay, or suffers to be allowed or paid or repaid, any drawback, rebate or allowance, so that any person shall by any device have or procure any transportation of products over such pipe-line at a less rate or charge than is fixed in such regulations ;

Is guilty of a misdemeanor, punishable by a fine not exceeding one thousand dollars, or by imprisonment not exceeding six months, or by both. (As amended by Laws 1892, ch. 692. See R. S., 1873, Laws 1878, ch. 203, § 33.)

§ 613. *Misconduct at corporate elections.*—Any person who :

1. Votes or issues a proxy to vote at any meeting of the stockholders or bondholders, or both, of a stock corporation, upon any stock or bond, if the person in whose behalf such vote is given shall not then have the title to the stock represented by such certificate or to such bond, and shall not have it in his possession

and control, notwithstanding such stock or bond shall then stamp on the books of such corporation in the name of the person in whose behalf such vote is given ; or,

2. Being entitled to vote at such meeting, sells his vote or issues a proxy to vote to any person for any sum of money or thing of value ; or,

3. Acts as an inspector of election at any such meeting and violates an oath taken by him, in pursuance of law as such inspector, or violates the provisions of an oath required by law to be taken by him as such inspector, or is guilty of any dishonest or corrupt conduct as such inspector ;

Is guilty of a misdemeanor. (As amended by Laws 1892, ch. 692. See R. S., 1983, Laws 1875, ch. 611, § 28 ; id., 1793, Laws 1880, ch. 510, § 2.)

§ 614. *Presumption of knowledge of corporate condition and business and of assent thereto by directors ; definitions.*—It is no defense to a prosecution for a violation of the provisions of this chapter, that the corporation is a foreign corporation, if it carries on business or keeps an office therefor in this state.

The term "director," as used in this chapter, includes any of the persons having, by law, the direction or management of the affairs of a corporation, by whatever name described.

A director of a corporation or joint-stock association is deemed to have such a knowledge of the affairs of the corporation or association as to enable him to determine whether any act, proceeding or omission of its directors is a violation of this chapter. If present at a meeting of the directors at which any act, proceeding or omission of such directors in violation of this chapter occurs, he must be deemed to have concurred therein, unless he at the time causes or in writing requires his dissent therefrom to be entered on the minutes of the directors. If absent from such meeting, he must be deemed to have concurred in any such violation, if the facts constituting such violation appear on the record or minutes of the proceedings of the board of directors, and he remains a director of the corporation for six months thereafter without causing or in writing requiring his dissent from such violation to be entered on such record or minutes.

§ 586. *Fraudulent conveyances.*—A person who either,

1. Becomes a party to a conveyance or assignment of real or personal property, or an interest therein, with intent to defraud

prior or subsequent purchasers, or to hinder, delay, or defraud creditors or other persons; or,

2. Being a party or privy to, or knowing of, such a conveyance or assignment so made, willfully puts the same in use as having been made in good faith;

Is guilty of a misdemeanor.¹

III. FRAUDULENT ISSUE OR SALE OF DOCUMENTS OF TITLE TO MERCHANDISE.

§ 628. *Issuing fictitious certificates by pipe-line corporations.*—A pipe-line corporation, or a person being the officer, agent, manager or representative thereof, who:

1. Accepts, makes or issues any receipt, certificate or order of any kind for any commodity, unless the commodity represented is actually at the time in the possession of the corporation; or,

2. Delivers to any person any petroleum or other commodity received for transportation by such corporation without the presentation and surrender of all vouchers, receipts, orders or certificate that have been issued or accepted for the same; or,

3. Having parted with the possession of any commodity and having received therefor an order, voucher, receipt or certificate shall reissue the same, or shall not cause it to be canceled by the word "canceled" stamped or printed legibly across the face thereof, and to be filed and recorded in such corporation as provided by law;

Is guilty of a misdemeanor. (As amended by Laws of 1892, ch. 692. See R. S., 1875, Laws of 1878, ch. 303, § 42.)

§ 629. *Issuing fictitious bills of lading, receipts and vouchers.*—A person who:

1. Being the master, owner or agent of any vessel, or officer or agent of any railway, express or transportation company, or otherwise being or representing any carrier, who delivers any bill of lading, receipt or other voucher, by which it appears that merchandise of any kind has been shipped on board a vessel, or delivered to a railway, express or transportation company, or other carrier, unless the same has been so shipped or delivered and at the time actually under the control of such carrier, or master owner or agent, of such vessel, or of some officer or agent of such company, to be forwarded as expressed in such bill of lading receipt or voucher; or,

2. Carrying on the business of a warehouseman, wharfinger or other depository of property, who issues any receipt, bill of lading or other voucher for merchandise of any kind which has not been actually received upon the premises of such person, and is not under his actual control at the time of issuing such instrument, whether such instrument is issued to a person as being the owner of such merchandise, or as security for any indebtedness;

Is guilty of a misdemeanor, punishable by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars or by both.¹ (As amended, Laws of 1892, ch. 692, combines Penal Code, sections 628 and 629, without substantial change.)

§ 630. *Erroneous bills of lading or receipts, issued in good faith, excepted*—No person can be convicted of an offense under the last two sections, for the reason that the contents of any barrel, box, cask or other vessel or package mentioned in the bill of lading, receipt or other voucher did not correspond with the description given in such instrument of the merchandise received, if such description corresponds substantially with the marks, labels or brands upon the outside of such vessel or package, unless it appears that the defendant knew that such marks, labels or brands were untrue.

§ 631. *Duplicate receipts must be marked "duplicate."*—A person mentioned in sections 628 and 629, who issues any second or duplicate receipt or voucher, of a kind specified in those sections, at a time while a former receipt or voucher for the merchandise specified in such second receipt is outstanding and uncanceled, without writing across the face of the same the word "duplicate," in a plain and legible manner, is punishable by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

§ 632. *Selling, hypothecating or pledging property received for transportation or storage.*—A person mentioned in sections 628 and 629, who sells or pledges any merchandise for which a bill of lading, receipt or voucher has been issued by him, without the consent in writing thereto of the person holding such bill, receipt or voucher, is punishable by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

§ 633. *Bill of lading or receipt issued by warehouseman, must be canceled on redelivery of the property.*—A person

¹ 44 St. Rep. 209.

mentioned in section 629, who delivers to another any merchandise for which a bill of lading, receipt or voucher has been issued, unless such receipt or voucher bears upon its face the words, "not negotiable," plainly written or stamped, or unless such receipt is surrendered to be canceled at the time of such delivery, a memorandum thereof is indorsed upon such receipt or voucher, is punishable by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

§ 634. *Property demanded by process of law.*—The last two sections do not apply to any case where property is demanded by virtue of legal process.

§ 437. *Destroying invoice.*—A person, who willfully destroys or suppresses an invoice, bill of lading, or any other document, writing, or thing whatever, which tends to show the ownership of wrecked property, is guilty of a misdemeanor.

IV. PASSAGE TICKETS, REGULATION AND SALE OF.

§ 616. *Sales by authorized agents restricted.*—No person except as allowed in section 622 shall ask, take or receive any money or valuable thing as a consideration for any passage or conveyance upon any vessel or railway train, or for the procurement of any ticket or instrument giving or purporting to give a right, either absolutely or upon a condition or contingency, to a passage or conveyance upon a vessel or railway train, or a berth or state-room on a vessel, unless he is an authorized agent within the provisions of the last section; nor shall any person, as such agent, sell or offer to sell any such ticket, instrument, berth or state-room, or ask, take or receive any consideration for any such passage, conveyance, berth or state-room, excepting at the office designated in his appointment, nor until he has been authorized to act as such agent according to the provisions of the last section, nor for a sum exceeding the price charged at the time of such sale, by the company, owners or consignees of the vessel or railway mentioned in the ticket. But a person who shall have purchased a ticket in good faith for his own passage, and shall have been prevented from using the same, may sell the ticket at any price not greater than the regular rate established therefor, to another purchaser in good faith, for his own use.

§ 617. *Unauthorized persons forbidden to sell certificates, receipts, etc., for the purpose of procuring tickets.*—No person other than an agent appointed, as provided in section 615,

shall sell, or offer to sell, or in any way attempt to dispose of any order, certificate, receipt or other instrument for the purpose, or under the pretense, of procuring any ticket or instrument mentioned in section 615, upon any company or line, vessel or railway therein mentioned. And every such order sold or offered for sale by any agent, must be directed to the company, owners or consignees at their office.

§ 618. *Punishment for fraud on accounts, etc.*—A person guilty of a violation of any of the provisions of the preceding sections of this chapter is punishable by imprisonment in a state prison not exceeding two years, or imprisonment in a county jail not exceeding six months. (As amended by Laws 1892, ch. 662.)

§ 619. *Conspiracy to sell passage tickets in violation of law.*—All persons who conspire together to sell or attempt to sell, to any person, any passage ticket, or other instrument mentioned in sections 615 and 617, in violation of those sections, and all persons who, by means of any such conspiring, obtain, or attempt to obtain, any money or property, under the pretense of procuring or securing any passage or right of passage in violation of this chapter, are punishable by imprisonment in a state prison not exceeding five years.

§ 620. *Conspirators may be indicted, though object not accomplished.*—Persons guilty of violating the last section may be indicted and convicted for a conspiracy, though the object of such conspiracy has not been executed.

§ 621. *Offices for unlawful sales of passage tickets are disorderly houses.*—All offices kept for the purpose of selling passage tickets in violation of any of the provisions of this chapter, and all offices where any such sale is made, are deemed disorderly houses; and all persons keeping any such office, and all persons associating together for the purpose of violating any of the provisions of this chapter are punishable by imprisonment in a county jail for a period not exceeding six months. (As amended by Laws 1892, chap. 662.)

§ 622. *Owners, pursers, etc., allowed to sell tickets.*—The provisions of this chapter do not prevent the actual owners or consignees of any vessel, from selling passage tickets thereon; nor do they prevent the purser or clerk of any vessel from selling in his office on board of such vessel, any passage tickets upon such vessel.

§ 623. *Station masters, conductors, etc., allowed to sell tickets.*—The provisions of this chapter do not prevent the station master or other ticket agent upon any railway, from selling in his office at any station on such railway, any passage tickets upon such railway; nor do they prevent any conductor upon a railway from selling such tickets upon the trains of such railway.

§ 624. *What must be stated in passage tickets.*—A ticket or instrument issued as evidence of a right of passage upon the high seas, from any port in this State to any other port of any other State or nation, and every certificate or order issued for the purpose, or under pretense of procuring any such ticket or instrument, must state the name of the vessel on board of which the passage is to be made, the name of the owners or consignees of such vessel, the name of the company, or lines, if any, to which such vessel belongs; the place from which such passage is to commence; the place where such passage is to terminate; the day of the month and year upon which the voyage is to commence; the name of the person or persons purchasing such ticket or instrument, or receiving such order, certificate or receipt, and the amount paid therefor; and such ticket or instrument, order, certificate or receipt, unless sold or issued by the owners or consignees of such vessel, must be signed by their authorized agent.

§ 625. *Sale of tickets not filled out as required in last section a misdemeanor.*—A person who issues, sells or delivers to another any ticket, instrument, certificate, order or receipt, which is not made or filled out as prescribed in the last section, is guilty of a misdemeanor.

§ 626. *Sales of passenger tickets at excessive rates.*—A person who:

1. Sells or causes to be sold, a passage ticket, or order for such ticket on any railway, vehicle or vessel, to any emigrant passenger at a higher rate than one and a quarter cents per mile; or

2. Takes payment for any such ticket or order for a ticket under a false representation as to the class of the ticket, whether emigrant or first-class; or,

3. Directly or indirectly, by means of false representations, purchases or receives from an emigrant passenger any such ticket; or,

4. Procures or solicits any such passenger having such a ticket, to exchange the same for another passenger ticket, or to sell the same and purchase some other passenger ticket; or,

5. Solicits or books any passenger arriving at the port of New York from a foreign country, before such passenger has left the vessel on which he has arrived, or enters or goes on board any vessel arriving at the port of New York from a foreign country, having emigrant passengers on board, for the purpose of soliciting or booking such passengers, and a person or agent of a corporation employing any person for the purpose of booking such passengers before leaving the ship ;

Is guilty of a misdemeanor.

§ 627. "*Company*" *defined*.—The term "company," as used in this chapter, includes all corporations, whether created under the laws of this state, or of the United States, or of those of any other state or nation.

§ 536. *Completed unissued instruments property*.—All the provisions of this chapter apply to cases where the property taken is an instrument for the payment of money, an evidence of debt, a public security, or a passage ticket, completed and ready to be issued or delivered, although the same has never been issued or delivered by the maker thereof to any person as a purchaser or owner.¹

§ 546. *Value of, how ascertained*.—If the thing stolen is a ticket proper, or other writing, entitling or purporting to entitle the holder or purchaser thereof to a passage upon a railway car, vessel or other public conveyance, the price at which a ticket entitling a person to a like passage is usually sold is deemed the value thereof.

V. FORGERY.

§ 509. *Forgery in first degree defined*.—A person is guilty of forgery in the first degree who with intent to defraud, forges,

1. An indorsement or other instrument, transferring or purporting to transfer the right or interest of any holder of such a certificate, obligation, public security, evidence of debt or liability, or of any person entitled to such right or interest ; or

2. A certificate of stock, bond or other writing, bank note, bill of exchange, draft, check, certificate of deposit, or other obligation or evidence of debt, issued or purporting to be issued by any bank, banking association or body corporate existing under the laws of this state, or of the United States, or of any other state, government, or country, declaring or purporting to declare any right, title or interest of any person in any portion of the capital

¹ N. Y. Crim. 586; 33 Hun, 62.

stock, or property of such a body corporate, or promising or purporting to promise or agree to the payment of money, or the performance of any act, duty, or obligation; or

3. An indorsement or other writing, transferring or purporting to transfer the right or interest of any holder of such a certificate, bond, or writing obligatory, or of any person entitled to such right or interest.

§ 510. *Id.*; *false certificate to certain instruments.*—An officer authorized to take the proof or acknowledgment of an instrument which by law may be recorded, who willfully certifies, falsely, that the execution of such an instrument was acknowledged by any party thereto, or that the execution of any such instrument was proved, is guilty of forgery in the first degree.

§ 511. *Id.*; *in second degree.*—A person is guilty of forgery in the second degree who, with intent to defraud,

1. Forges the great or privy seal of this state, the seal of any court of record, or of any public office or officer authorized by law, or of any body corporate created by or existing under the laws of this state, or of the United States, or of any other state or any territory of the United States, or of any other state, government, or country, or any impression of such a seal; or any gold or silver coin, whether of the United States, or of any foreign state, government or country; or

2. An entry made in any book of record or accounts * * * or an entry made in any book of records or accounts kept by a corporation doing business within the state, or in any account kept by such a corporation, whereby any pecuniary obligation, claim, or credit is or purports to be created, increased, diminished, discharged, or in any manner affected; or * * * An instrument or writing, being or purporting to be the act of another, by which a pecuniary demand or obligation is or purports to be or to have been created, increased, discharged, or diminished, or in any manner affected, or by which any right or property whatever are or purport to be or to have been created, transferred, conveyed, discharged, increased, or diminished, or in any manner affected, the punishment for forging, altering, or counterfeiting, which is not hereinbefore prescribed, by which false making, forging, altering, or counterfeiting, any person may be bound, affected or in any way injured in his person or property.¹

¹32 Hun, 179, 181; 2 N. Y. Crim. 277; 95 N. Y. 624.

§ 513. *Other cases of forgery in second degree.*—An instrument partly written and partly printed, or wholly printed with a written signature thereto, and any signature, or writing purporting to be a signature of, or intended to bind an individual, a partnership, a corporation or association, or any officer thereof, is a written instrument within the provisions of this chapter.

§ 514. *Other cases of forgery in third degree.*—A person who either

1. Being an officer or in the employment of a corporation, association, partnership or individuals falsifies, or unlawfully and corruptly alters, erases, obliterates or destroys any accounts, records, or other writing, belonging to or appertaining to the business of the corporation, association or partnership or individuals; or,

2. Who, with intent to injure or defraud, shall falsely make, alter, forge or counterfeit, or shall cause, aid, abet, assist or otherwise connive at, or be a party to the making, altering, forging or counterfeiting of any letter, telegram or other written communication, paper, or instrument by which making, altering, forging or counterfeiting, any other person shall be in any manner injured in his good name, standing, position or general reputation; or,

3. Who shall alter, or who shall cause, aid, abet, or otherwise connive at, or be a party to the uttering of any letter, telegram, report or other written communication, paper or instrument purporting to have been written or signed by another person, or any paper purporting to be a copy of any such paper or writing where no original existed, which said letter, telegram, report or other written communication, paper or instrument, or paper purporting to be a copy thereof, as aforesaid, the person uttering the same shall know to be false, forged or counterfeited, and by the uttering of which the sentiments, opinions, conduct, character, prospects, interest or rights of such other person shall be misrepresented or otherwise injuriously affected; or,

4. With intent to defraud, shall forge, counterfeit or falsely alter and wrongfully utter any ticket, contract or other paper, or writing entitling, or purporting to entitle, the person whose name appears therein, or the holder or bearer thereof, to entrance upon the grounds or premises of any membership corporation, or being thereupon, to remain upon such grounds or premises; or with like intent, shall use any such ticket, contract or other paper or writing, to effect an entrance or as evidence of his right to remain upon such grounds or premises; or, with like intent, shall sell, exchange

or deliver, or keep or offer for sale, exchange or delivery, or receive upon any purchase, exchange or delivery, any such ticket, contract or other paper or writing, knowing the same to have been forged, counterfeited or falsely altered,

Is guilty of forgery in the third degree. (As amended by Laws 1892, chap. 692. Substituted for Penal Code, § 514. See R. S., 1840, Laws 1886, chap. 547, § 1.)

§ 515. *Id.*—A person who with intent to defraud or conceal any larceny or misappropriation by any person of any money or property, either

1. Alters, erases, obliterates, or destroys an account, book of accounts, record, or writing, belonging to, or appertaining to the business of, a corporation, association, public office or officer, partnership, or individual; or

2. Makes a false entry in any such account or book of accounts; or

3. Willfully omits to make true entry of any material particular in any such account or book of accounts, made, written, or kept by him or under his direction;

Is guilty of forgery in the third degree.

§ 516. *Forging passage tickets.*—A person who, with intent to defraud, forges, counterfeits, or falsely alters any ticket, check or other paper or writing, entitling or purporting to entitle the holder or proprietor thereof to a passage upon any railway or in any vessel or other public conveyance; and a person who, with like intent, sells, exchanges or delivers, or keeps or offers for sale, exchange or delivery, or receives upon any purchase, exchange or delivery, any such ticket, knowing the same to have been forged, counterfeited or falsely altered, is guilty of forgery in the third degree.

§ 518. *Officer of corporation selling, etc.*—An officer, agent or other person employed by any company or corporation existing under the laws of this state, or of any other state or territory of the United States, or of any foreign government, who willfully and with a design to defraud, sells, pledges or uses to be sold, pledged or issued, or signs or procures to be signed with intent to sell, pledge or issue, or to be sold, pledged or issued, a false, forged or fraudulent paper, writing or instrument, being or purporting to be a scrip, certificate or other evidence of the ownership or transfer of any share or shares of the capital stock of such company or corporation, or a bond or other evidence of debt of such company or

corporation, or a certificate or other evidence of the ownership or of the transfer of any such bond or other evidence of debt, is guilty of forgery in the third degree, and upon conviction, in addition to the punishment prescribed in this title for that offense, may also be sentenced to pay a fine not exceeding three thousand dollars.

§ 519. *Falsely indicating person as corporate officer.*—The false making or forging of an instrument or writing, purporting to have been issued by or in behalf of a corporation or association, state or government, and bearing the pretended signature of any person, therein falsely indicated as an agent or officer of such corporation, is forgery in the same degree, as if that person were in truth such officer or agent of the corporation or association, state or government.

§ 520. *Terms "forge" and "forging."*—The expression "forge," "forged" and "forging," as used in this chapter, include false making, counterfeiting and the alteration, erasure, or obliteration of a genuine instrument, in whole or in part, the false making or counterfeiting of the signature, of a party or witness, and the placing or connecting together with intent to defraud different parts of several genuine instruments.

§ 521. *Uttering, etc., forged instruments, etc., is forgery.*—A person who, knowing the same to be forged or altered, and with intent to defraud, utters, offers, disposes or puts off as true, or has in his possession, with intent so to utter, offer, dispose of, or put off, either

1. A forged seal or plate, or any impression of either ; or
2. A forged coin ; or
3. A forged will, deed, certificate, indorsement, record, instrument or writing, or other thing, the false making, forging, or altering of which is punishable as forgery ;

Is guilty of forgery in the same degree as if he had forged the same.

§ 522. *Uttering writing signed with wrong-doer's name.*—Whenever the false making or uttering of any instrument in writing is forgery in any degree, a person is guilty of forgery in the same degree, who, with intent to defraud, offers, disposes of, or puts off such an instrument or writing subscribed or indorsed in his own name, or that of any other person, whether such signature be genuine or fictitious, under the pretense that such subscrip-

tion or indorsement is the act of another person of the same name, or of a person not in existence.

§ 364. (*am'd 1889.*) *Offenses against trade-marks.*—A person who, knowingly, in a case where provision for the punishment for the offense is not otherwise specially made by statute:

1. Falsely makes or counterfeits a trade-mark; or
2. Affixes to any article of merchandise, a false or counterfeit trade-mark, knowing the same to be false or counterfeit, or the genuine trade-mark, or an imitation of the trade-mark of another without the latter's consent, is guilty of a misdemeanor.

§ 367. "*Affixing*" *defined.*—A trade-mark is deemed to be affixed to an article of merchandise, when it is placed in any manner in or upon, either

1. The article itself; or
2. A box, bale, barrel, bottle, case, cask, or other vessel or package, or a cover, wrapper, stopper, brand, label, or other thing, in, by, or with which the goods are packed, inclosed, or otherwise prepared for sale or disposition.

§ 440. *Master of vessel bringing foreign convict.*—A person, being the master or commander of any vessel, or boat, arriving from a foreign county, who knowingly brings into this state a person who has been, or is a foreign convict of any offense, which if committed in this state would be punishable therein, is guilty of a misdemeanor.

§ 444. *Interfering with navigation.*—A person who throws, or causes, or permits to be thrown, from any boat, scow, or other vessel, or in any other manner, into any of the navigable waters of this state, including bays, sounds and harbors, any earth, ashes, cinders, stone, or other material, or who builds any structure therein, which will in any manner lessen the depth of such waters, or interfere with the free and safe navigation thereof, is guilty of a misdemeanor.

§ 538. *Keeping wrecked goods a misdemeanor.*—A person, who takes away goods or other property not his own from a stranded vessel, or any goods or other property cast by the sea upon the land or found in a bay or creek, or who knowingly becomes possessed of any such goods or other property, and does not deliver the same, within forty-eight hours thereafter, to the sheriff or one of the coroners or wreck masters of the county where the same was found, is guilty of a misdemeanor.

§ 540. *Bringing stolen goods into state, larceny.*—A per-

son, who having, at any place without the state, stolen the property of another, or received such property, knowing it to have been stolen, brings the same into this state, may be convicted and punished in the same manner as if such larceny or receiving had been committed within the state. Complaint may be made and the indictment found and tried, and the offense may be charged to have been committed, in any county into or through which the stolen property is brought.

§ 359. *Overloading passenger vessel.*—A person navigating a vessel for gain, who willfully or negligently receives so many passengers, or such a quantity of other lading, on board the vessel, that by means thereof it sinks or is upset or injured, and thereby the life of a human being is endangered, is guilty of a misdemeanor.

§ 576. *Fitting out or lading any vessel, with intent to wreck the same.*—A person who fits out any vessel, or who lades any cargo on board of a vessel, who* with intent to permit or cause the same to be wrecked, sunk, or otherwise injured or destroyed, and thereby to defraud or prejudice an insurer or another person, is punishable by imprisonment in the state prison not exceeding ten years. (As Am'd by Ch. 662, Laws 1892.)

§ 372. *Defacing marks upon wrecked property.*—A person who defaces or obliterates the marks upon wrecked property, or in any manner disguises the appearance thereof, with intent to prevent the owner from discovering its identity, or who destroys or suppresses any invoice, bill of lading or other document tending to show the ownership thereof, is guilty of a misdemeanor.

§ 374. *Officer unlawfully detaining wrecked property.*—An officer, whose duties pertain in any way to wrecked property, who without authority of law, detains such property or the proceeds thereof, after the salvage and expenses chargeable thereon have been paid or offered to him, or who is guilty of any fraud, embezzlement or extortion in the discharge of such duties, is guilty of a misdemeanor.

§ 415. *Ferries.*—A person who :

1. Maintains a ferry for profit or hire upon any of the waters of this state without authority of law ; or,

2. Having entered into a recognizance to keep or maintain a ferry, violates the condition of such recognizance :

Is guilty of a misdemeanor.

Where such ferry is upon waters dividing two counties, the

offender may be prosecuted in either county. (As Am'd by Ch. 692, Laws 1892 ; combines §§ 416 and 417.)

§ 638. *Altering, etc., signal or light for vessel, etc.*—A person who, with intent to bring a vessel, railway engine or railway train into danger, either

1. Unlawfully or wrongfully shows, masks, extinguishes, alters, or removes a light or other signal ; or

2. Exhibits any false light or signal ;

Is punishable by imprisonment for not more than ten years.

§ 428. *Fires and lights on vessels in certain counties.*—A person who violates any of the provisions of an act to prevent conflagrations, passed May 19, 1879, is guilty of a misdemeanor, triable as therein prescribed.*

§ 417. *Violating condition of recognizance to keep a ferry.*—A person who, having entered into a recognizance to keep and attend a ferry, violates the condition of such recognizance, is guilty of a misdemeanor.

§ 350. *Duty of masters to suppress gambling on board their vessels.*—If the commander, owner, or hirer of any vessel or float knowingly permits any gambling for money or property on board such vessel or float, or if he does not, upon his knowledge of the fact, immediately prevent the same, he is punishable by a fine not exceeding five hundred dollars, and, in addition thereto, is liable to any party losing money or property or by means of gambling in violation of this section, in a sum equal to the money or property, to be recovered in a civil action.

§ 391. *Violation of quarantine laws by master of vessel.*—A master of a vessel subject to quarantine or visitation by the health officer, arriving in the port of New York, who refuses or omits :

1. To proceed to and anchor his vessel at the place assigned for quarantine, at the time of his arrival ; or

2. To submit his vessel, cargo and passengers, to the examination of the health officer, and to furnish all necessary information to enable that officer to determine the length of quarantine and other regulations to which they ought respectively to be subject ; or

3. To remain with his vessel at quarantine during the period

* This is an act to prevent conflagrations in certain cases in New York, Kings and Queens counties, and relates to the use, etc., of fire or light on vessels, etc., within 150 feet of places where petroleum is stored.

assigned for her quarantine, and while at quarantine to comply with the directions and regulations prescribed by law, and with such as any of the officers of health, by virtue of the authority given to them by law, shall prescribe in relation to his vessel, his cargo, himself, his passengers or crew, is punishable by imprisonment not exceeding one year, or by a fine not exceeding \$2,000, or both.

§ 392. *Giving information, or permitting person to land before visit of health officers.*—A master of a vessel hailed by a pilot, who: 1. Gives false information to such pilot, relative to the condition of his vessel, crew or passengers, or the health of the place or places from whence he came, or refuses to give such information as shall be lawfully required; or, 2. Lands any person from his vessel, or permits any person, except a pilot, to come on board of his vessel, or unlades, or tranships any portion of his cargo, before his vessel has been visited and examined by the health officers; or, 3. Approaches with his vessel nearer the city of New York than the place of quarantine to which he may be directed, is punishable by imprisonment not exceeding one year, or by a fine not exceeding \$2,000, or by both.

§ 393. *Landing from vessel before visit of health officers.*—A person, who, being on board of any vessel at the time of her arrival at the port of New York, lands from such vessel, or unlades, or tranships, or assists in unlading or transshipping any portion of her cargo before such vessel has been visited and examined by the health officers, is punishable by imprisonment not exceeding one year, or by a fine not exceeding \$2,000, or both.

§ 394. *Going on board vessel at quarantine grounds, etc., without leave.*—A person who goes on board of, or has any communication or intercourse with, any vessel at quarantine, or with any of the crew and passengers of such vessel, without the permission of the health officer, and every person who, without such authority, enters the quarantine grounds or anchorage, is punishable by imprisonment not exceeding one year or by a fine not exceeding two thousand dollars, or both; and in addition thereto he may be detained at quarantine so long as the health officer directs, not exceeding twenty days.

§ 396. *Obstructing health officer in the performance of his duty.*—A person who willfully opposes or obstructs a health officer or physician charged with the enforcement of the health laws, in performing any legal duty, is guilty of a misdemeanor.

§ 398. *Unlicensed piloting.*—A person other than a lawfully authorized branch Hell Gate pilot, who pilots, or offers to pilot, or tows, or offers to tow, any boat or vessel (except barges, vessels under fifty-tons burden; and canal boats actually used in navigating the canals) through that part of East river commonly called Hell Gate, is guilty of a misdemeanor. But no pilotage shall be charged to any vessel under a coasting license on entering or departing from the port of New York, by way of East river, called Hell Gate, unless such vessel actually employs a pilot; and the making such* charge or demand without such employment, shall be deemed a misdemeanor.

§ 399. *Coasting steamers excepted.*—The last section does not apply to vessels propelled wholly or partly by steam, owned or belonging to citizens of the United States, and licensed and engaged in the coasting trade.¹

§ 434. *Exposing person affected with a contagious disease, in a public place.*—A person, who willfully exposes himself or another, affected with any contagious or infectious disease, in any public place or thoroughfare, except upon his necessary removal in a manner not dangerous to the public health, is guilty of a misdemeanor.

VII. INJURIES TO PROPERTY ; NUISANCE.

§ 654. *Injuries to property, or interfering with railroad property ; how punished.*—A person who unlawfully and willfully destroys or injures any real or personal property of another, or who without authority or permission from a person who has the right to give such authority or permission, loosens any brake or blocking of any car standing on any railroad track in this State, or without like authority or permission, puts upon or runs any hand car, or other car, on any railroad track in this State, or without like authority or permission, interferes or meddles with any brake or coupling of any car while standing or moving on any railroad track in this State, or takes any part therein, in a case where the punishment is not specially prescribed by statute, is punishable as follows :

1. If the value of the property destroyed, or the diminution in the value of the property by the injury is more than twenty-five dollars, by imprisonment for not more than four years.

* So in the original.

¹ 1 N. Y. Crim. 497.

2. In any other case, by imprisonment for not more than six months, or by a fine of not more than two hundred and fifty dollars, or by both such fine and imprisonment.

3. And in addition to the punishment prescribed therefor, he is liable in treble damages for the injury done, to be recovered in a civil action by the owner of such property, or the public officer having charge thereof. (As amended, Laws of 1892, ch. 186.)¹

§ 635. *Injuries to railroad tracks, etc.*—A person who:

1. Displaces, removes, injures or destroys any rail, sleeper-switch, bridge, viaduct, culvert, embankment or structure, or any part thereof attached, appertaining to or connected with any railway, whether operated by steam, horses, or other motive power; or,

2. Places any obstructions upon the track of any such railway; or,

3. Willfully destroys or breaks any guard erected or maintained by a railroad corporation as a warning signal for the protection of its employes; or,

4. Willfully discharges a loaded firearm, or projects or throws a stone or other missile at a railway train, or at a locomotive, car or vehicle standing or moving upon a railway; or,

5. Willfully displaces, removes, cuts, injures or destroys any wire, insulator, pole, dynamo, motor, locomotive, or any part thereof, attached, appertaining to or connected with any railway operated by electricity, or willfully interferes with or interrupts any motive power used in running such road, or willfully places any obstruction upon the track of such railroad, or willfully discharges a loaded firearm, or projects or throws a stone or any other missile at such railway train or locomotive, car or vehicle, standing or moving upon such railway;

Is punishable as follows:

1. If thereby the safety of any person is endangered, by imprisonment for not more than ten years.

2. In every other case, by imprisonment for not more than three years or by a fine of not more than two hundred and fifty dollars, or both.

§ 651. *Unlawful interference with gas meter or steam valves.*—A person who, willfully, with the intention to injure or defraud;

¹31 Hun, 58; 2 N. Y. Crim. 37; 39 St. R. 752; 42 St. R. 724; 44 St. R. 485 45 St. R. 516; 47 St. R. 379, 925.

1. Connects a tube, pipe, or other instrument or contrivance, with a pipe used for conducting or supplying illuminating gas, fuel or natural gas, in such manner as to supply such gas to any burner or orifice, where the same is or can be burned or used, without passing through the meter or instrument provided for registering the quantity consumed; or

2. Obstructs, alters, injures, or prevents the action of a meter or instrument used to measure or register the quantity of illuminating fuel or natural gas consumed in a house or apartment, or at an orifice or burner, or by a consumer or other person; or,

3. Opens, or causes to be opened, or reconnects, or causes to be reconnected, any valve lawfully closed or disconnected by a district steam corporation; or,

4. Turns on steam, or causes it to be turned on, or to re-enter any premises when the same has been lawfully stopped from entering such premises;

Is guilty of a misdemeanor. (As am'd by Laws 1892, ch. 692. Penal Code, § 651, R. S., 1975, L. 1880, ch. 263, § 5).

§ 651. *Unlawful interference with gas meter or steam valves.*—A person who willfully, with intent to injure or defraud, connects a tube, pipe or other instrument or contrivances, with a pipe used for conducting or supplying illuminating gas, fuel or natural gas, in such a manner as to supply such gas to any burner or orifice, where the same can be burned or used without passing through the meter or instrument provided for registering the quantity consumed; or who wilfully, with intent to injure or defraud, obstructs, alters, injures or prevents the action of a meter or other instrument used to measure or register the quantity of illuminating, fuel or natural gas, consumed in a house or apartment, or at an orifice or burner, or by a consumer or other person or a person other than a state inspector or deputy inspector of gas meters, or an employee of the company owning any gas meter, who wilfully shall detach or disconnect such meter or make or report any test of, or examine for the purpose of testing any such meter so attached or disconnected is guilty of a misdemeanor.

A person who wilfully with intent to injure or defraud either

1. In any manner whatever, changes, extends or alters, any service or other pipe, or attachment of any kind, connecting or through which, natural or artificial gas is furnished from the gas mains or pipes of any person, company or corporation without

first procuring from said person, company or corporation written permission to make such change, extension or alteration ; or,

2. Makes any connection or reconnection, with the gas mains or service pipes of any person, company or corporation furnishing to consumers natural or artificial gas, or turns on or off, or in any manner interferes with any valve or stop-cock or other appliances belonging to such person, company or corporation, connected with its service or other pipes, or enlarges the orifice of mixers or uses natural gas for heating purposes except through mixers, without first procuring from such person, company or corporation, a written permit to turn on or off such stop-cock or valve, or to make such connections or reconnections, or to enlarge the orifice of mixers, or to use for heating purposes without mixers, or to interfere with the valves, stop-cocks, or other appliances of such person, company or corporation, as the case may be ; or,

3. Retains possession of, or refuses to deliver any mixer or mixers, or other appliances which may be, or may have been loaned or rented to them by any person, company or corporation, for the purpose of furnishing gas through the same, or who sells, loans, or in any manner disposes of the same to any person or persons, other than the said person, company or corporation entitled to the possession of the same ; or

4. Sets on fire any gas escaping from wells, broken or leaking mains, pipes, valves or other appliances used by any person, company or corporation, in conveying gas to consumers, or interferes in any manner with the wells, pipes, mains, gate boxes, valves, stop-cocks, or any other appliances, machinery or property of any person, company or corporation engaged in furnishing gas to consumers, unless employed by, or acting under the authority and direction of such person, company or corporation, is guilty of a misdemeanor, and punishable by imprisonment for not more than one year or a fine of not more than one hundred dollars, or by both such fine and imprisonment.¹ (As am'd by Laws 1892. Replaces the above amendment. Ed.)

§ 639. *Injuring pier, sea wall, dock, rock, buoy, pipe, main, sewer, telegraph, etc.*—A person who willfully or maliciously displaces, removes, injures, or destroys,

1. A public highway or bridge, or a private way laid out by authority of law, or a bridge upon such public or private way ; or

¹ 30 Hun, 507.

2. A pier, boom, or dam, lawfully erected or maintained upon any water within the state, or hoists any gate in or about such dam ; or

3. A pile, or other material, fixed in the ground and used for securing any sea bank or sea walls, or the bank or dam of any river or other water, or any dock, quay, jetty, or lock ; or

4. A buoy or beacon, lawfully placed in any waters within the state ; or

5. A tree, rock, post, or other monument, which has been either erected or marked for the purposes of designating a point in the boundary of the state, or of a county, city, town, or village, or of a farm, tract, or lot of land, or any mark or inscription thereon ; or

6. A mile board, mile stone, or guide post, erected upon a highway, or any inscription upon the same ; or

7. A line of telegraph or telephone, wire or cable, pier or abutment, or the material or property belonging thereto, without lawful authority, or who shall unlawfully and willfully cut, break, tap, or make connection with any telegraph or telephone line, wire, cable or instrument, or read or copy in any unauthorized manner any message, communication or report passing over it, in this state ; or who shall willfully prevent, obstruct or delay, by any means or contrivance whatsoever, the sending, transmission, conveyance or delivery, in this state, of any authorized message, communication or report by or through any telegraph or telephone line, wire or cable, under the control of any telegraph or telephone company doing business in this state ; or who shall aid, agree with, employ or conspire with any person or persons to unlawfully do, or permit or cause to be done, any of the acts hereinbefore mentioned, or who shall occupy, use a line, or shall knowingly permit another to occupy, use a line, a room, table establishment or apparatus to unlawfully do or cause to be done any of the acts hereinbefore mentioned.¹ (As amended, Laws of 1892, ch. 372.)

8. A pipe or main for conducting gas or water, or any works erected for supplying buildings with gas or water, or any appurtenance or appendage connected therewith ; or

9. A sewer or drain, or a pipe or main connected therewith, or forming part thereof ; or who

¹128 N. Y. 127.

10. Destroys or damages with intent to destroy or render useless any engine, machine, tool or implement intended for use in trade or husbandry ;

Is punishable by imprisonment for not more than two years.

§ 389. (am'd 1887.) *Keepiny gunpowder, etc.*—A person who makes or keeps gunpowder, nitro-glycerine, or any other explosive or combustible material, within a city or village, or carries such materials through the streets thereof, in a quantity or manner prohibited by law or by ordinance of the city or village, is guilty of a misdemeanor. And a person who, by the careless, negligent, or unauthorized use or management of gunpowder or other explosive substance, injures or occasions the injury of the person or property of another, is punishable by imprisonment for not more than two years. Any person or persons who shall knowingly present, attempt to present, or cause to be presented or offered for shipment to any railroad, steamboat, steamship, express or other company engaged as common carrier of passengers or freight, dynamite, nitro-glycerine, powder or other explosives dangerous to life or limb, without revealing the true nature of said explosives or substance so offered or attempted to be offered to the company or carrier to which it shall be presented, shall be guilty of a felony, and upon conviction, shall be fined in any sum not exceeding one thousand dollars and not less than three hundred dollars, or imprisonment in a state prison for not less than one nor more than five years, or be subject to both such fine and imprisonment ; and any person or company sustaining injury or damage by the violation of this act shall have and maintain an action at law against the person or persons violating any of the provisions of this act, for compensation for said injury or damage, whether said persons shall have been convicted as hereinbefore mentioned, or not.

§ 390. *Throwing gas tar, etc., into public waters.*—A person, who throws or deposits gas tar, or the refuse of a gas house or gas factory, or offal, refuse, or any other noxious, offensive, or poisonous substance into any public waters, or into any sewer or stream running or entering into such public waters, is guilty of misdemeanor.

§ 645. *Endangering life by maliciously placing explosive near building.*—A person, who places in, upon, under, against, or near to, any building, car, vessel or structure, gunpowder or any other explosive substance, with intent to destroy, throw down, or injure the whole or any part thereof, under such circumstances,

that, if the intent were accomplished, human life or safety would be endangered thereby, although no damage is done, is guilty of a felony.

VIII. DANGEROUS USE OF MACHINERY ; HOMICIDE.

§ 360. *Unauthorized pressure of steam.*—A person who applies, or causes to be applied, to a steam boiler a higher pressure of steam than is allowed by law, or by the inspector, officer or person authorized to limit the pressure of steam to be applied to such boiler, is guilty of a misdemeanor.

§ 361. *Generation of unsafe amount of steam.*—A captain or other person having charge of the machinery or boiler of a steamboat, used for the conveyance of passengers, in the waters of this state, who, from ignorance or gross neglect, or for the purpose of increasing the speed of the boat, creates, or causes to be created, an undue and unsafe pressure of steam, is guilty of a misdemeanor.

§ 362. *Mismanagement of steam boilers.*—An engineer or other person having charge of a steam boiler, steam engine, or other apparatus for generating or employing steam, employed in a railway, manufactory, or other mechanical works, who, willfully or from ignorance or gross neglect, creates or allows to be created such an undue quantity of steam as to burst the boiler, engine or apparatus, or cause any other accident whereby human life is endangered, is guilty of a misdemeanor.

§ 195. *By negligent use of machinery.*—A person who, by any act of negligence or misconduct in a business or employment in which he is engaged, or in the use or management of any machinery, animals, or property of any kind, intrusted to his care, or under his control, or by any unlawful, negligent or reckless act, not specified by or coming within the foregoing provisions of this chapter, or the provisions of some other statute, occasions the death of a human being, is guilty of manslaughter in the second degree.

§ 197. *Killing by overloading passenger vessel.*—A person navigating a vessel for gain, who willfully or negligently receives so many passengers or such a quantity of other lading on board the vessel, that, by means thereof, the vessel sinks, or is upset or injured, and thereby a human being is drowned, or otherwise killed, is guilty of manslaughter in the second degree.

§ 198. *Liability of persons in charge of steamboats.*—A person having charge of a steamboat used for the conveyance of passengers, or of a boiler or engine thereof, who, from ignorance, recklessness, or gross neglect, or for the purpose of excelling any other boat in speed, creates, or allows to be created, such an undue quantity of steam as to burst the boiler, or other apparatus in which it is generated or contained, or to break any apparatus or machinery connected therewith, whereby the death of a human being is occasioned, is guilty of manslaughter in the second degree.

§ 199. *Liability of persons in charge of steam engines.*—An engineer or other person, having charge of a steam boiler, steam engine, or other apparatus for generating or applying steam, employed in a boat or railway, or in a manufactory, or in any mechanical works, who willfully, or from ignorance or gross neglect, creates or allows to be created, such an undue quantity of steam as to burst the boiler, engine, or apparatus, or to cause any other accident, whereby the death of a human being is produced, is guilty of manslaughter in the second degree.

IX. ARSON.

§ 486. *Arson in first degree defined.*—A person who willfully burns, or sets on fire, in the night time, either

1. A dwelling house in which there is, at the time, a human being; or

2. A car, vessel, or other vehicle, or a structure or building other than a dwelling house, wherein, to the knowledge of the offender, there is, at the time, a human being;

Is guilty of arson in the first degree.¹

§ 487. *Id.; in second degree.* A person who,

1. Commits an act of burning in the day time, which, if committed in the night time, would be arson in the first degree;

2. Willfully burns, or sets on fire, in the night time, a car, vessel, or other vehicle, or a structure or building, ordinarily occupied at night by a human being, although no person is within it at the time;

Is guilty of arson in the second degree.²

§ 488. *Id.; in third degree.* A person who willfully burns, or sets on fire, either

¹ 47 St. R., 335.

² 47 St. R., 335.

1. A vessel, car, or other vehicle, or a building, structure, or other erection, which is, at the time, insured against loss or damage by fire, with intent to prejudice the insurer thereof; or

2. A vessel, car, or other vehicle, or a building, structure, or other erection, under circumstances not amounting to arson in the first or second degree;

Is guilty of arson in the third degree.¹

§ 492. "*Night time*" defined. The words "night time," as used in this chapter, include the period between sunset and sunrise, and every building or structure, which shall have been usually occupied by persons lodging therein at night, is a dwelling house within the meaning of this chapter.

§ 493. "*Building*" defined. Any house, vessel or other structure, capable of affording shelter for human beings, or appurtenant to or connected with a structure so adapted, is a "building" within the meaning of this chapter.²

§ 637. *Burning certain property, how punished.* A person who willfully burns or sets fire to any grain, grass, or growing crop, or standing timber, or to any building, fixtures or appurtenances to real property of another, under circumstances not amounting to arson in any of its degrees, is punishable by imprisonment not more than four years.

X. BURGLARY.

§ 498. *Burglary in third degree.*—A person who either

1. With intent to commit a crime therein, breaks and enters a building, or a room, or any part of a building; or

2. Being in any building, commits a crime therein and breaks out of the same;

Is guilty of burglary in the third degree.³

§ 499. "*Break*," defined.—The word "break," as used in this chapter, means and includes

1. Breaking or violently detaching any part, internal or external, of a building; or

2. Opening, for the purpose of entering therein, by any means whatever, any outer door of a building, or of any apartment or set of apartments therein separately used or occupied, or any

¹ 47 St. R., 335.

² 59 Hun, 82; 35 St. R., 493.

³ 26 St. Rep., 33; 37 St. Rep., 661; 45 St. Rep., 515

window, shutter, scuttle, or other thing, used for covering or closing an opening thereto or therein, or which gives passage from one part thereof to another; or

3. Obtaining an entrance into such a building or apartment, by any threat or artifice used for that purpose, or by collusion with any person therein; or

4. Entering such a building or apartment by or through any pipe, chimney, or other opening, or by excavating, digging, or breaking through or under the building, or the walls or foundation thereof.

§ 500. "*Night time*," *defined*.—The words "night time," in this chapter, include the period between sunset and sunrise.

§ 501. "*Enter*," *defined*.—The word "enter," as used in this chapter, includes the entrance of the offender into such building or apartment, or the insertion therein of any part of his body or of any instrument or weapon in his hand, and used, or intended to be used, to threaten or intimidate the inmates, or to detach or remove property.

§ 502. "*Dwelling-house*," *defined*.—A building, any part of which is usually occupied by a person lodging therein at night, is, for the purposes of this chapter, deemed a dwelling-house.

§ 504. "*Building*," *defined*.—The term "building," as used in this chapter, includes a railway car, vessel, booth, tent, shop, or other erection or inclosure.¹

§ 663. *Transporting animals for more than twenty-four consecutive hours a misdemeanor*.—A railway corporation, or an owner, agent, consignee or person in charge of any horses, sheep, cattle or swine in the course of or for transportation, who confines, or causes or suffers the same to be confined, in cars for a longer period than twenty-four consecutive hours without unloading, for rest, water and feeding, during ten consecutive hours, unless prevented by storm or inevitable accident, is guilty of a misdemeanor. In estimating such confinement, the time during which the animals have been confined, without rest, on any connecting road from which they are received, must be computed. If the owner, agent, consignee or other person in charge of any such animals refuses or neglects upon demand to pay for the care or feed of the animals so unloaded or rested, the railway company or other carriers thereof may charge the expense thereof to the

¹ 9 Hun, 82; 35 St. Rep., 493; 37 St. Rep., 661.

owner or consignee, and shall have a lien thereon for such expenses.¹

§ 659. *Carrying animal in a cruel manner, a misdemeanor.*—A person who carries or causes to be carried in or upon any vessel or vehicle or otherwise, any animal in a cruel or inhuman manner, or so as to produce torture, is guilty of a misdemeanor.

§ 196. *Owner of animals.*—If the owner of a mischievous animal, knowing its propensities, willfully suffers it to go at large, or keeps it without ordinary care, and the animal, while so at large, and not confined, kills a human being, who has taken all the precautions which the circumstances permitted to avoid the animal, the owner is guilty of manslaughter in the second degree.

§ 655. *Overdriving an animal, and failing to feed properly, a misdemeanor.*—A person who overdrives, overloads, tortures or cruelly beats or unjustifiably injures, maims, mutilates or kills any animal, whether wild or tame, and whether belonging to himself or to another, or deprives any animal of necessary sustenance, food or drink, or neglects or refuses to furnish it such sustenance or drink, or causes or procures or permits any animal to be overdriven, overloaded, tortured, cruelly beaten or unjustifiably injured, maimed, mutilated or killed, or to be deprived of necessary food or drink, or who willfully sets on foot, instigates, engages in or in any way furthers any act of cruelty to any animal, or any act tending to produce such cruelty, is guilty of a misdemeanor.

§ 669. *Definitions.*—1. The word “animal” as used in this title, does not include the human race, but includes every other living creature.

2. The word “torture” or “cruelty” includes every act, omission, or neglect, whereby unjustifiable physical pain, suffering or death is caused or permitted.

XII. MISCELLANEOUS PROVISIONS.

§ 223. (Subd. 5.) *Ejection of passenger, when declared not unlawful.*—To use, or attempt or offer to use, force or violence upon or towards the person of another is not unlawful in the following case: When committed by a carrier of passengers,

¹ 25 St. Rep., 250.

or the authorized agent or servants of such carrier, or by any person assisting them at their request in expelling from a carriage, railway car, vessel or other vehicle, a passenger who refuses to obey a lawful or reasonable regulation prescribed for the conduct of passengers, if such vehicle has first been stopped, and the force or violence used is not more than sufficient to expel the offending passenger with a reasonable regard to his personal safety.

§ 381. *Innkeepers and carriers refusing to receive guests and passengers.*—A person, who, either on his own account or as agent or officer of a corporation, carries on business as innkeeper, or as common carrier of passengers, and refuses, without just cause or excuse, to receive and entertain any guest, or to receive and carry any passenger, is guilty of a misdemeanor.

§ 383. *Protecting civil and public rights.**—No citizen of this state can by reason of race, color, or previous condition of servitude, be excluded from the equal enjoyment of any accommodation, facility or privilege furnished by innkeepers, or common carriers, or by owners, managers or lessees of theatres or other places of amusement, by teachers and officers of common schools and public institutions of learning, or by cemetery associations. The violation of this section is a misdemeanor, punishable by a fine of not less than fifty dollars, nor more than five hundred dollars.

§ 675. *Relating to disorderly conduct on public conveyances.*—Any person who shall, by any offensive or disorderly act or language, annoy or interfere with any person or persons in any place or with the passengers of any public stage, railroad car, ferry boat, or other public conveyance, or who shall disturb or offend the occupants of such stage, car, boat, or conveyance, by any disorderly act, language, or display, although such act, conduct, or display, may not amount to an assault or battery, shall be deemed guilty of a misdemeanor. A person who willfully and wrongfully commits any act which seriously injures the person or property of another, or which seriously disturbs or endangers the public peace or health, or which openly outrages public decency, for which no other punishment is expressly prescribed by this code, is guilty of a misdemeanor; but nothing in this code contained shall be so construed as to prevent any person

* See Laws of 1873, Chapter 186, to same effect.

from demanding an increase of wages, or from assembling and using all lawful means to induce employers to pay such wages to all persons employed by them as shall be a just and fair compensation for services rendered.¹ (As amended, 1891.)

§ 676. *Acts committed outside of the state.*—A person who commits an act without this state which affects persons or property within this state, or the public health, morals, or decency, of this state, and which, if committed within this state, would be a crime, is punishable as if the act were committed within this state.

§ 171 "A." *Coercion by employers.*—Any person or persons employer or employers of labor, and any person or persons of any corporation or corporations on behalf of such corporation or corporations, who shall hereafter coerce or compel any person or persons, employee or employees, laborer or mechanic, to enter into an agreement, either written or verbal from such person, persons, employee, laborer or mechanic, not to join or become a member of any labor organization, as a condition of such person or persons securing employment, or continuing in the employment of any such person or persons, employer or employers, corporation or corporations, shall be deemed guilty of a misdemeanor.

§ 2. The penalty for such misdemeanor shall be imprisonment in a penal institution for not more than six months, or by a fine of not more than \$200, or by both such fine and imprisonment. (Added 1887.)

§ 292. *Employments prohibited to children.*—A person who employs or causes to be employed, or who exhibits, uses, or has in custody, or trains for the purpose of the exhibition, use or employment of, any child actually or apparently under the age of sixteen years; or who having the care, custody or control of such a child as parent, relative, guardian, employer, or otherwise, sells, lets out, gives away, so trains, or in any way procures or consents to the employment, or to such training, or use, or exhibition of such child; or who neglects or refuses to restrain such child from such training, or from engaging or acting, either

5. In any practice or exhibition or place dangerous or injurious to the life, limb, health or morals of the child, is guilty of a misdemeanor. But this section does not apply to the employment of

¹41 St. Rep., 562.

any child as a singer of musician in a church, school or academy; or in teaching or learning the science or practice of music; or as musician in any concert or in a theatrical exhibition, with the written consent of the mayor of the city, or the president of the board of trustees of the village where such concert or exhibition takes place. Such consent shall not be given unless forty-eight hours previous notice of the application shall have been served in writing upon the society mentioned in section two hundred and ninety-three of the Penal Code, if there be one within the county, and a hearing had thereon if requested, and shall be revocable at the will of the authority giving it. It shall specify the name of the child, its age, the names and residence of its parents or guardians, the nature, time, duration and number of performances permitted, together with the place and character of the exhibition. But no such consent shall be deemed to authorize any violation of the first, second, fourth or fifth subdivisions of this section.¹ (As am'd by Laws of 1392, ch. 309.)

§ 641. *Divulging, etc., telegram a misdemeanor.*—A person who, either

1. Wrongfully obtains, or attempts to obtain any knowledge of a telegraphic message by connivance with a clerk, operator, messenger, or other employee of a telegraph company;

2. Being such clerk, operator, messenger or other employee, willfully divulges, to any but the persons for whom it was intended, the contents of a telegraphic message or dispatch intrusted to him for transmission or delivery, or the nature thereof, or willfully refuses or neglects duly to transmit or deliver the same;

Is punishable by a fine of not more than one thousand dollars, or by imprisonment for not more than six months, or by both such fine and imprisonment.

§ 642. *Opening or publishing a sealed letter, etc.*—A person who willfully and without authority, either

1. Opens or reads, or causes to be opened or read, a sealed letter or telegram; or

2. Publishes the whole or any portion of such a letter or telegram, knowing it to have been opened or read without authority,
Is guilty of a misdemeanor.

¹37 Hun, 435; 47 St. Rep., 501.

§ 41*t*. *Duress and intimidation of voters*.—Any person or corporation, who, directly or indirectly,

1. Uses or threatens to use any force, violence, or restraint, or inflicts or threatens to inflict, any injury, damage, harm, or loss, or in any other manner practices intimidation upon or against any person, in order to induce or compel such person to vote or refrain from voting at any election, or to vote or refrain from voting for any particular person or persons at any election, or on account of such person having voted or refrained from voting at any election; or

2. By abduction, duress, or any forcible or fraudulent device or combination whatever, impedes, prevents, or otherwise interferes with the free exercise of the elective franchise by any voter, or compels, induces, or prevails upon any voter to give or refrain from giving his vote for any particular person at any election; or

3. Being an employer, pays his employees the salary or wages due, inclosed in "pay envelopes," upon which there is written or printed any political motto, device, or argument containing threats, express or implied, intended or calculated to influence the political opinions or actions of such employees; or within ninety days of a general election, put or otherwise exhibit in the establishment or place where his employes are engaged in labor, any handbill or placard containing any threat, notice or information, that if any particular ticket or candidate is elected or defeated, work in his place or establishment will cease, in whole or in part, his establishment be closed up, or the wages of his employes reduced, or other threats, express or implied, intended or calculated to influence the political opinions or actions of his employes.

Is guilty of a misdemeanor, and if a corporation, in addition, forfeits its charter. [As am'd by Laws 1892, Ch. 393, a substitute for Penal Code, § 41*c*.]

§ 264*a*. *Furnishing libelous information*.—Any person who willfully states, delivers or transmits by any means whatever to the manager, editor, publisher or reporter of any newspaper, magazine, publication, periodical or serial for publication therein any libelous statement concerning any person or corporation and thereby secures the actual publication of the same, is guilty of a misdemeanor.

THE CODE OF CRIMINAL PROCEDURE.

SECTION 1. *Courts of special sessions, jurisdiction of.*—Section fifty-six of the Code of Criminal Procedure is hereby amended so as to read as follows:

§ 56. Subject to the power of removal provided for in this chapter, courts of special sessions, except in the city and county of New York and the city of Albany, have in the first instance exclusive jurisdiction to hear and determine charges of misdemeanors committed within their respective counties, as follows:

* * * * *

9. Intoxication of a person engaged in running any locomotive engine upon any railroad, or while acting as a conductor of a car, or train of cars, on any such railroad, or a misdemeanor committed by any person on a railroad car or train. (*Thus amended, Laws of 1890, chap. 521.*)

* * * * *

23. Unlawfully frequenting or attending a steamboat landing, railroad depot, church, banking institution, broker's office, place of public amusement, auction room, store, auction, sale at private residence, passenger car, hotel, restaurant, or any other gathering of people. (*Thus amended, Laws 1886, chap. 28.*)¹

§ 137. *Of crime committed in the state on board of any railway train, etc.*—When a crime is committed in this state, in or on board of any railway engine, train or car, making a passage or trip on or over any railway in this state, or in respect to any portion of the landing or freightage of any such railway train or engine car, the jurisdiction is in any county through which, or any part of which, the railway train or car passes, or has passed, in the course of the same passage or trip, or in any county where such passage or trip terminates, or would terminate if completed.

§ 335. *Plea of guilty, how put in.*—A plea of guilty can only be put in by the defendant himself in open court, except upon an indictment against a corporation, in which case it may be put in by counsel.

§ 675. *Summons upon an information or presentment against a corporation, by whom issued, and when returnable.*—Upon an information against a corporation, the magistrate

¹38 Hun, 181; 1 N. Y. Crim. R. 441; 2 N. Y. Crim. R. 439; 34 St. Rep., 642; 34 St. Rep., 427; 35 St. Rep., 843.

must issue a summons, signed by him, with his name of office, requiring the corporation to appear before him, at a specified time and place, to answer the charge; the time to be not less than ten days after the issuing of the summons. (3 R. S., 1046, §§ 56, 57, 58.)

§ 676. *Form of the summons.*—The summons must be in substantially the following form:

"*County of Albany* [or as the case may be].

"In the name of the people of the state of New York:

"To the [naming the corporation]:

"You are hereby summoned to appear before me, at [naming the place], on [specifying the day and hour], to answer a charge made against you, upon the *information of A. B.*, for [designating the offense, generally].

"Dated at the *city* [or 'town'] of ———, the ——— day of ———, 18—.

"G. H., *Justice of the Peace.*"

[Or as the case may be.]

§ 667. *When and how served.*—The summons must be served at least five days before the day of appearance fixed therein, by delivering a copy thereof and showing the original to the president, or other head of the corporation, or to the secretary, cashier or managing agent thereof.

§ 678. *Examination of the charge.*—At the time appointed in the summons, the magistrate must proceed to investigate the charge, in the same manner as in the case of a natural person brought before him, so far as those proceedings are applicable.

§ 679. *Certificate of the magistrate, and return thereof with depositions.*—After hearing the proofs, the magistrate must certify upon the depositions, either that there is or is not sufficient cause to believe the corporation guilty of the offense charged, and must return the depositions and certificate, in the manner prescribed in section 221.

§ 680. *Grand jury may proceed as in the case of a natural person.*—If the magistrate return a certificate that there is sufficient cause to believe the corporation guilty of the offense charged, the grand jury may proceed thereon as in the case of a natural person held to answer.

§ 681. *Appearance and plea to indictment and proceedings thereon.*—When an indictment is filed against any corpo-

ration, such corporation must be arraigned thereon, and the court acquires jurisdiction over the corporation, in the manner following:

1. The clerk of the court wherein such indictment is found, or to which it is sent or removed, or the district attorney of the county must issue a summons signed by him with his name of office, requiring such corporation to appear and answer the indictment by a demurrer or written plea to be verified in like manner as a pleading in a civil action, at a time and place to be specified in such summons, such time to be not less than five days after the issue thereof. The summons may be substantially in the following form:

Court of oyer and terminer of the county of _____ (state
the proper county or court as the case may be)

The people of the state of New York

vs.

A. B. company.

You are hereby summoned to appear in this court and by demurrer or plea in writing, duly verified, answer an indictment filed against you by the grand jury of this county, on the _____ day of _____, charging you with the crime of (designating the offense generally), at a term of the court of oyer and terminer (or as the case may be), of this county, at (naming the place) on (stating the day and hour) and in case of your failure to so appear and answer, judgment will be pronounced against you.

Dated at the city (or town) of _____, the _____ day of _____
18 _____ C. D.,

District Attorney.

(or by order of the court, E. F., Clerk, as the case may be).

2. The summons must be served at least four days before the appearance fixed therein, in the same manner as is provided for the service of a summons upon a corporation in a civil action; and if the corporation does not appear in the manner and at the time and place specified in the summons, judgment must be pronounced against it.

3. Nothing contained in this section shall be construed as preventing the appearance of a corporation by counsel to answer an indictment, without the issuance or service of the summons as above provided. And when an indictment shall have been filed against a corporation it may voluntarily appear and answer the

same by counsel duly authorized to so appear for it; in which case the court acquires full jurisdiction over the corporation in the same manner as if the summons had been issued and served. (*As amended by L. 1892, ch. 219, to take effect September 1, 1892.*)

§ 682. *Fine on conviction, how collected.*—When a fine is imposed upon a corporation upon conviction, it may be collected in the same manner as a judgment in civil action, and if an execution issued upon such judgment be returned unsatisfied, the district attorney of the county may thereupon bring an action in the name of the people of the state of New York, to procure a judgment sequestering the property of the corporation, as provided by the Code of Civil Procedure. (*As amended by L. 1892, ch. 219, to take effect September 1, 1892.*)

CHAPTER IX.

MISCELLANEOUS LAWS.

SECTION 1. How private corporations may be organized.

2. The Whirlpool Bridge Company. Act creating.

3. The Niagara Falls Power Company. Act creating.

4. Increase or reduction of number of directors of a stock corporation.

5. Improvement and maintenance of public roads in certain counties as city roads.

§ 1. HOW PRIVATE CORPORATIONS MAY BE ORGANIZED.

Article VII, section 1 of the Constitution of the State of New York.—Corporations may be formed under general laws, but shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the Legislature, the objects of the corporation cannot be attained under general laws. All general laws and special acts passed pursuant to this section may be altered from time to time.

§ 2. THE WHIRLPOOL BRIDGE COMPANY. ACT CREATING. LAWS OF 1891, CHAPTER 189.

§ 7. *Power to take and hold real estate; corporation to have same powers as railroad corporations in certain matters.*—The said corporation is hereby empowered to purchase, receive and hold such real estate on either side of the Niagara river as may be necessary and convenient in accomplishing the objects for which this charter is granted, and may, by their surveyor and engineer, enter upon such sites and locations and take possession of the same. All such sites and locations as shall be entered upon, as aforesaid, shall, except donations, be purchased of the owner or owners at a price to be mutually agreed upon; in cases of disagreement as to the prices to be paid for such land, within the boundaries of the State of New York, then the said corporation shall possess all the powers and privileges contained in the thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth, twenty-first, twenty-second, twenty-third, twenty-fourth, twenty-fifth,

twenty-sixth and twenty-eighth sections of the act entitled "An act to authorize the formation of railroad corporations, and to regulate the same, passed April second, eighteen hundred and fifty, and as the same have been and stand amended and subject to the duties, liabilities and provisions of the said sections contained.

§ 8. *This corporation to possess general powers, etc., prescribed in act authorizing consolidation of certain railroad companies.*—The corporation shall possess the general powers and be subject to the restrictions and liabilities prescribed in the act entitled "An act authorizing the consolidation of certain railroad companies," passed May twentieth, eighteen hundred and sixty-nine, so far as the same are applicable thereto, for the purpose of consolidating with any corporation chartered for like purposes by the parliament of Canada; and shall further have the power to lease the said bridge, the approaches and connections and appurtenances thereto, to any chartered corporation for such time and on such time and terms as may be agreed upon.

§ 3. THE NIAGARA FALLS POWER COMPANY. ACT CREATING.
LAWS OF 1891. CHAPTER 253.

§ 10. *Right to enter upon lands under streets, highways, railroads, etc.*—Said company may enter upon and use the ground or soil under any street, highway, road, railroad land or public ground except Erie canal land, within said counties for the purposes aforesaid, and may, when necessary, change the location or surface grade of any street, highway or road; and such right shall be continuous for said purposes, including the relaying, repairing, altering or extending its works; provided, however, that in cases where any open canal or other open work of said company, shall cross any street, highway, road, public ground or railroad land, said company shall construct, and at all times thereafter maintain suitable and proper bridges over its said work where such bridges are rendered necessary by the construction of its said works; and in cases where its pipes or other covered work shall be laid under the surface of any road, street, highway, public ground or railroad land the surface thereof shall be made and kept suitable for public travel, and as nearly as may be as it was before said work was done; and in cases of posts and elevated conductors, cables or wires upon and over such road, street, high-

way, public ground or railroad land, the same shall be so placed and elevated as not to interfere with the ordinary use thereof by the public or railroad company, or highway or railroad purposes.

§ 4. INCREASE OR REDUCTION OF NUMBER OF DIRECTORS FOR STOCK CORPORATION. LAWS 1801. CHAPTER 57.

§ 1. *Stockholders may reduce number of directors ; notice; minutes.*—The number of directors of any stock corporation may be increased or reduced, but, not above the maximum nor below the maximum number prescribed by law, when the stockholders owning a majority of the stock of the corporation shall so determine, at a meeting to be held at the usual place of meeting of the directors, on thirty days' notice in writing to each stockholder of record. Such notice shall be served personally or by mail directed to each stockholder at his post-office address. The proceedings of such meeting shall be entered in the minutes of the corporation, and a transcript thereof verified by the president and secretary of the meeting shall be filed in the offices where the original certificates of incorporation were filed. Laws 1890. Chapter 564. Section 21.

§ 3. *Documents in the hands of attorneys.*—Where a person places papers or documents in the hands of an attorney or solicitor, the latter cannot be compelled, under a subpoena, *duces tecum*, to produce them before a court of justice, or otherwise, and disclose their contents, for the same reason that an attorney cannot be compelled to disclose confidential communications made to him by his client.

§ 5. IMPROVEMENT AND MAINTENANCE OF PUBLIC ROADS IN CERTAIN COUNTIES, AS CITY ROADS, LAWS OF 1848, CHAPTER 555.

§ 7. *Railways, how authorized, constructed and maintained.*—No horse railway, or electric or other railway, shall be laid, constructed or operated on said county roads, unless, in addition to the requirements of existing laws, the same shall be authorized by a two-third vote of the board of supervisors, and unless the same shall be constructed with a flat or grooved rail, and in case of horse railways, paved between the tracks in the manner prescribed by the board of supervisors in the resolution authori-

zing the same and the same constantly maintained in good order and condition by said railroad company, and the railroad or corporation constructing the same shall agree thereto, and it shall be the duty of the said board of supervisors to require from said railroad or corporation. or other person a bond with sufficient sureties as a guarantee, and conditioned for the performance of their agreement, and the board of supervisors may, from time to time, require such bond to be renewed in case the sureties, or any of them, in its judgment shall become insufficient.

CHAPTER X.

THE INTER-STATE COMMERCE ACT.

APPROVED February 4, 1887, and in effect April 5, 1887. U. S. Statutes at Large, Vol. 24, p. 379 ; Public No. 41. As amended by act approved and in effect March 2, 1889. U. S. Statutes at Large, Vol. 25, p. — ; Public No. 125.

SECTION 1. Carriers and transportation subject to the act. What terms "railroad" and "transportation" includes charges to be reasonable.

2. Unjust discrimination forbidden.

3. Undue or unreasonable preference or advantage forbidden. Facilities for interchange of traffic.

4. Long and short haul provision.

5. Pooling of freights and division of earnings forbidden.

6. Printing and posting of schedules of rates, fares and charges.

Printing and posting of schedules of rates on freight carried through a foreign country. Ten days public notice of advances in rates to be given.

Three days public notice of reduction in rates to be given.

Published rates not to be deviated from. Copies of schedules of rates, fares and charges to be filed with commission.

Copies of contracts and agreements to be filed with commission.

Joint tariffs to be filed with commission. Power of commission to prevent the publicity. Ten days notice to commission of advance in joint rates, fares and charges.

Three days notice to commission of reduction in joint rates, fares and charges.

Power of commission to make advances or reductions public.

Joint rates, fares and charges not to be deviated from.

Commission may prescribe forms of schedules of rates, fares, and charges.

Penalties for neglecting or refusing to file or publish rates, fares and charges.

7. Continuous carriage of freights not to be unnecessarily interrupted.

8. Liability of common carriers for damages.

9. Persons claiming to be damaged may complain to commission or bring suits in United States courts. Officers, &c., of defendant may be compelled to testify.

10. Penalties for violations of act by carriers, their officers or agent.

Fine and imprisonment. Penalties for false billing, etc., by shippers and other persons. Fine and imprisonment. Penalties for inducing common carriers to discriminate unjustly. Fine and imprisonment. Joint liability with carrier for damages.

11. Inter-state commerce commissioner—how appointed. Term of commissioners.
12. Power of commission to require attendance of witnesses and production of books and papers. Depositions. When and how taken. Notice of intention to take deposition. Witness to be sworn. Evidence to be reduced to writing. Witness in foreign country. Fees. Punishment for refusal to testify or produce books and papers.
13. Complaint to commission. How and by whom made. Reparation by carriers before investigation. Investigations by the commission.
14. Findings of commission. *Prima facie* evidence in judicial proceedings. Reports and decisions. Authorized publication to be competent evidence. Publication and distribution of annual reports of commission.
15. Notice of common carrier to cease from violation of act. Compliance with notice to cease from violation of act. Reparation.
16. Petition to United States courts in case of disobedience to order of commission. Power of United States courts to hear and determine cases of disobedience. Writs of injunction or other process against carriers in cases of disobedience. Punishment for refusal to obey writs of injunction or other proper process. Fine. Appeals to supreme court of United States. Petition to United States courts in cases of disobedience when trial by jury is necessary. Trial by jury. Trial by court. Appeals to supreme court of United States. Counsel or attorneys' fees.
17. Inter-state commerce commission. Form of Procedure. Official seal.
18. Salaries of commissioners. Secretary—how appointed; salary offices and supplies. Witness's fees. Expenses of the commission—how paid.
19. Principal office of the commission. Sessions of the commission.
20. Carriers subject to the act must render full annual reports to commission. Commission may prescribe methods of keeping accounts.
21. Annual report of the commission to congress.
22. Persons and property that may be carried free or at reduced rates. Mileage, excursion, or commutation passenger tickets. Passes and free transportation to officers and employees of railroad companies. Pending litigation not effected by act. Jurisdiction of United States courts to issue writs of peremptory *mandamus* commanding the movement of inter-state traffic or the furnishing of cars or other transportation facilities.

SECTION 1. *Carriers and transportation subject to the act.*
 —Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of this act shall apply to any common carrier or carriers engaged in the transportation of passengers or property

wholly by railroad, or partly by railroad and partly by water when both are used, under a common control, management, or arrangement, for a continuous carriage or shipment, from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country: *Provided, however,* That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property, wholly within one State, and not shipped to or from a foreign country from or to any State or Territory as aforesaid.

What the terms "railroad" and "transportation" include.—The term "railroad" as used in this act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease; and the term "transportation" shall include all instrumentalities of shipment or carriage.

Charges to be reasonable.—All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, or for the receiving, delivering, storage, or handling of such property, shall be reasonable and just; and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful.

§ 2. *Unjust discrimination forbidden.*—That if any common carrier subject to the provisions of this act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of

a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

§ 3. *Undue or unreasonable preference or advantage forbidden.*—That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Facilities for interchange of traffic.—Every common carrier subject to the provisions of this act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business.

§ 4. *Long and short haul provision.*—That it shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier within the terms of this act to charge and receive as great compensation for a shorter as for a longer distance: *Provided, however,* That upon application to the commission appointed under the provisions of this act, such common carrier may, in special cases, after investigation by the Commission, be authorized to charge less for longer than for shorter distances for the transportation of pas-

sengers or property ; and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section of this act.

§ 5. *Pooling of freights and division of earnings forbidden.*—That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof ; and in any case of an agreement for the pooling of freights as aforesaid, each day of its continuance shall be deemed a separate offense.

§ 6. (*As amended.*) *Printing and posting of schedules of rates, fares, and charges.*—That every common carrier subject to the provisions of this act shall print and keep open to public inspection schedules showing the rates and fares and charges for the transportation of passengers and property which any such common carrier has established and which are in force at the time upon its route. The schedules printed as aforesaid by any such common carrier shall plainly state the places upon its railroad between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also state separately the terminal charges and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates and fares and charges. Such schedules shall be plainly printed in large type, and copies for the use of the public shall be posted in two public and conspicuous places, in every depot, station, or office of such carrier where passengers or freight, respectively, are received for transportation, in such form that they shall be accessible to the public and can be conveniently inspected.

Printing and posting of schedules of rates on freight carried through a foreign country.—Any common carrier subject to the provisions of this act receiving freight in the United States to be carried through a foreign country to any place in the United States shall also in like manner print and keep open for public inspection, at every depot or office where such freight is received for shipment, schedules showing the through rates established and charged by such common carrier to all points in the United States beyond the foreign country to which it accepts freight for shipment ; and any freight shipped from the United

States through a foreign country into the United States, the through rate on which shall not have been made public as required by this act, shall, before it is admitted into the United States from said foreign country, be subject to customs duties as if said freight were of foreign production; and any law in conflict with this section is hereby repealed.

Ten days' public notice if advances in rates to be given.—

No advance shall be made in the rates, fares, and charges which have been established and published as aforesaid by any common carrier in compliance with the requirements of this section, except after ten days' public notice, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the increased rates, fares, or charges will go into effect; and the proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection. Reductions in such published rates, fares, or charges shall only be made after three days' previous public notice, to be given in the same manner that notice of an advance in rates must be given.

Published rates not to be deviated from.—And when any such common carrier shall have established and published its rates, fares, and charges in compliance with the provisions of this section, it shall be unlawful for such common carrier to charge, demand, collect, or receive from any person or persons a greater or less compensation for the transportation of passengers or property, or for any services in connection therewith, than is specified in such published schedule of rates, fares, and charges as may at the time be in force.

Copies of schedules of rates, fares, and charges to be filed with Commission.—Every common carrier subject to the provisions of this act shall file with the Commission hereinafter provided for copies of its schedules of rates, fares, and charges which have been established and published in compliance with the requirements of this section, and shall promptly notify said Commission of all changes made in the same. Every such common carrier shall also file with said Commission copies of all contracts, agreements, or arrangements with other common carriers in relation to any traffic affected by the provisions of this act to which it may be a party.

Joint tariffs to be filed with commission.—And in cases where passengers and freight pass over continuous lines or routes

operated by more than one common carrier, and the several common carriers operating such lines or routes establish joint tariffs of rates or fares or charges for such continuous lines or routes copies of such joint tariffs shall also, in like manner, be filed with said commission.

Power of commission to prescribe publicity.—Such joint rates, fares, and charges on such continuous lines so filed as aforesaid shall be made public by such common carriers when directed by said Commission, in so far as may, in the judgment of the Commission, be deemed practicable; and said Commission shall from time to time prescribe the measure of publicity which shall be given to such rates, fares, and charges, or to such part of them as it may deem it practicable for such common carriers to publish, and the places in which they shall be published.

Ten days' notice to Commission of advance in joint rates, fares and charges.—No advance shall be made in joint rates, fares, and charges, shown upon joint tariffs, except after ten days' notice to the Commission, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the increased rates, fares, or charges will go into effect.

Three days' notice to Commission of reduction in joint rates, fares, and charges.—No reduction shall be made in joint rates, fares, and charges, except after three days' notice, to be given to the Commission as is above provided in the case of an advance of joint rates.

Power of Commission to make advances or reductions public.—The Commission may make public such proposed advances, or such reductions, in such manner as may, in its judgment, be deemed practicable, and may prescribe from time to time the measure of publicity which common carriers shall give to advances or reductions in joint tariffs.

Joint rates, fares, and charges not to be deviated from.—It shall be unlawful; for any common carrier, party to any joint tariff, to charge, demand, collect, or receive from any person or persons a greater or less compensation for the transportation of persons or property, or for any services in connection therewith, between any points as to which a joint rate, fare, or charge is named thereon than is specified in the schedule filed with the Commission in force at the time.

Commission may prescribe forms of schedules of rates, fares, and charges.—The Commission may determine and prescribe the form in which the schedules required by this section to be kept open to public inspection shall be prepared and arranged, and may change the form from time to time as shall be found expedient.

Penalties for neglecting or refusing to file or publish rates, fares, and charges.—If any such common carrier shall neglect or refuse to file or publish its schedules or tariffs of rates, fares, and charges as provided in this section, or any part of the same, such common carrier shall, in addition to other penalties herein prescribed, be subject to a writ of *mandamus*, to be issued by any circuit court of the United States in the judicial district wherein the principal office of said common carrier is situated, or wherein such offense may be committed, and if such common carrier be a foreign corporation in the judicial circuit wherein such common carrier accepts traffic and has an agent to perform such service, to compel compliance with the aforesaid provisions of this section; and such writ shall issue in the name of the people of the United States, at the relation of the Commissioners appointed under the provisions of this act; and the failure to comply with its requirements shall be punishable as and for a contempt; and the said Commissioners, as complainants, may also apply, in any such circuit court of the United States, for a writ of injunction against such common carrier, to restrain such common carrier from receiving or transporting property among the several States and Territories of the United States, or between the United States and adjacent foreign countries, or between ports of transshipment and of entry and the several States and Territories of the United States, as mentioned in the first section of this act, until such common carrier shall have complied with the aforesaid provisions of this section of this act.

§ 7. *Continuous carriage of freights not to be unnecessarily interrupted.*—That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any combination, contract, or agreement, expressed or implied, to prevent, by change of time schedule, carriage in different cars, or by other means or devices, the carriage of freights from being continuous from the place of shipment to the place of destination; and no break of bulk, stoppage, or interruption made by such common carrier shall prevent the carriage of freights from being and being

treated as one continuous carriage from the place of shipment to the place of destination, unless such break, stoppage, or interruption was made in good faith for some necessary purpose, and without any intent to avoid or unnecessarily interrupt such continuous carriage or to evade any of the provisions of this act.

§ 8. *Liability of common carriers for damages.*—That in case any common carrier subject to the provisions of this act shall do, cause to be done, or permit to be done any act, matter, or thing in this act prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this act required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this act, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case.

§ 9. *Persons claiming to be damaged may complain to Commission or bring suit in United States courts.*—That any person or persons claiming to be damaged by any common carrier subject to the provisions of this act may either make complaint to the Commission as hereinafter provided for, or may bring suit in his or their own behalf for the recovery of the damages for which such common carrier may be liable under the provisions of this act, in any district or circuit court of the United States of competent jurisdiction; but such person or persons shall not have the right to pursue both of said remedies, and must in each case elect which one of the two methods of procedure herein provided for he or they will adopt.

Officers, &c., of defendant may be compelled to testify.—In any such action brought for the recovery of damages the court before which the same shall be pending may compel any director, officer, receiver, trustee, or agent of the corporation or company defendant in any suit to attend, appear and testify in such case, and may compel the production of the books and papers of such corporation or company party to any such suit; the claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

§ 10. (*As amended.*) *Penalties for violations of act by carriers, their officers or agents: Fine and imprisonment.*—That any common carrier subject to the provisions of this act, or, whenever such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or person, acting for or employed by such corporation, who, alone or with any other corporation, company, person, or party, shall willfully do or cause to be done, or shall willfully suffer or permit to be done, any act, matter, or thing in this act prohibited or declared to be unlawful, or who shall aid or abet therein, or shall willfully omit or fail to do any act, matter, or thing in this act required to be done, or shall cause or willingly suffer or permit any act, matter, or thing so directed or required by this act to be done not to be so done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of this act, or shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any district court of the United States within the jurisdiction of which such offense was committed, be subject to a fine of not to exceed five thousand dollars for each offense: *Provided*, That if the offense for which any person shall be convicted as aforesaid shall be an unlawful discrimination in rates, fares, or charges, for the transportation of passengers or property, such person shall, in addition to the fine hereinbefore provided for, be liable to imprisonment in the penitentiary for a term of not exceeding two years, or both such fine and imprisonment, in the discretion of the court.

Penalties for false billing, etc., by carriers, their officers or carriers: Fine and imprisonment.—Any common carrier subject to the provisions of this act, or, whenever such common carrier is a corporation, any officer or agent thereof, or any person acting for or employed by such corporation, who, by means of false billing, false classification, false weighing, or false report of weight, or by any other device or means, shall knowingly and willfully assist, or shall willingly suffer or permit, any person or persons to obtain transportation for property at less than the regular rates then established and in force on the line of transportation of such common carrier, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term

of not exceeding two years, or both, in the discretion of the court, for each offense.

Penalties for false billing, etc., by shippers and other persons: Fine and imprisonment.—Any person and any officer or agent of any corporation or company who shall deliver property for transportation to any common carrier, subject to the provisions of this act, or for whom as consignor or consignee any such carrier shall transport property, who shall knowingly and willfully, by false billing, false classification, false weighing, false representation of the contents of the package, or false report of weight, or by any other device or means, whether with or without the consent or connivance of the carrier, its agent or agents, obtain transportation for such property at less than the regular rates then established and in force on the line of transportation, shall be deemed guilty of fraud, which is hereby declared to be a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject for each offense to a fine of not exceeding five thousand dollars or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court.

Penalties for inducing common carriers to discriminate unjustly: Fine and imprisonment. Joint liability with carrier for damages.—If any such person, or any officer or agent of any such corporation or company, shall, by payment of money or any other thing of value, solicitation, or otherwise, induce any common carrier subject to the provisions of this act, or any of its officers or agents, to discriminate unjustly in his, its or their favor as against any other consignor or consignee in the transportation of property, or shall aid or abet any common carrier in any such unjust discrimination, such person or such officer or agent of such corporation or company shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court, for each offense; and such person, corporation, or company shall also, together with said common carrier, be liable, jointly or severally, in an action on the case to be brought by any consignor or consignee discriminated against in

any court of the United States of competent jurisdiction for all damages caused by or resulting therefrom.

§ 11. *Interstate Commerce Commissioners—how appointed.—Terms of Commissioners.*—That a Commission is hereby created and established to be known as the Inter-State Commerce Commission, which shall be composed of five Commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. The Commissioners first appointed under this act shall continue in office for the term of two, three, four, five, and six years, respectively, from the first day of January, *Anno Domini* eighteen hundred and eighty-seven, the term of each to be designated by the President; but their successors shall be appointed for terms of six years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired time of the Commissioner whom he shall succeed. Any Commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. Not more than three of the Commissioners shall be appointed from the same political party. No person in the employ of or holding any official relation to any common carrier subject to the provisions of this act, or owning stock or bonds thereof, or who is in any manner pecuniarily interested therein, shall enter upon the duties of or hold such office. Said Commissioners shall not engage in any other business, vocation, or employment. No vacancy in the Commission shall impair the right of the remaining Commissioners to exercise all the powers of the Commission.

§ 12. *Power of Commission to inquire into business of carriers.*—That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created.

Commission required to enforce the provisions of the act.—And the Commission is hereby authorized and required to execute and enforce the provisions of this act; and, upon the request of the Commission, it shall be the duty of any district attorney of the United States to whom the Commission may apply to institute in the proper court and to prosecute under the

direction of the Attorney-General of the United States all necessary proceedings for the enforcement of the provisions of this act and for the punishment of all violations thereof, and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States; and for the purposes of this act the Commission shall have power to require, by subpoena, the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation.

Power of Commission to require attendance of witnesses and production of books and papers.—Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the Commission, or any party to a proceeding before the Commission, may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section.

And any of the circuit courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any common carrier subject to the provisions of this act, or other person, issue an order requiring such common carrier or other person to appear before said Commission (and produce books and papers if so ordered) and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. The claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying; but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

Depositions, when and how taken.—The testimony of any witness may be taken, at the instance of a party, in any proceeding or investigation depending before the Commission, by deposition, at any time after a cause or proceeding is at issue on petition and answer. The Commission may also order testimony to be taken by deposition in any proceeding or investigation pending before it, at any stage of such proceeding or investigation. Such depositions may be taken before any judge of any court of

the United States, or any commissioner of a circuit, or any clerk of a district or circuit court, or any chancellor, justice, or judge of a supreme or superior court, mayor or chief magistrate of a city, judge of a county court, or court of common pleas of any of the United States, or any notary public, not being of counsel or attorney to either of the parties, nor interested in the event of the proceeding or investigation.

Notice of intention to take deposition.—Reasonable notice must first be given in writing by the party or his attorney proposing to take such deposition to the opposite party or his attorney of record, as either may be nearest, which notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and depose, and to produce documentary evidence, in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission as hereinbefore provided.

Witnesses to be sworn; evidence to be reduced to writing.—Every person deposing as herein provided shall be cautioned and sworn (or affirm, if he so request) to testify the whole truth, and shall be carefully examined. His testimony shall be reduced to writing by the magistrate taking the deposition, or under his direction, and shall, after it has been reduced to writing, be subscribed by the deponent.

Witness in foreign country.—If a witness whose testimony may be desired to be taken by deposition be in a foreign country, the deposition may be taken before an officer or person designated by the Commission, or agreed upon by the parties by stipulation in writing to be filed with the Commission. All depositions must be promptly filed with the Commission.

Witnesses whose depositions are taken pursuant to this act, and the magistrate or other officer taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

Punishment for refusal to testify or produce books and papers.—And any of the circuit courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any common carrier subject to the provisions of this act, or other person, issue an order requiring such common carrier or other person to appear before said Commission (and produce books and papers if

so ordered) and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. The claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying; but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

§ 13. *Complaints to Commission. How and by whom made.* That any person, firm, corporation, or association, or any mercantile, agricultural, or manufacturing society, or any body politic or municipal organization complaining of anything done or omitted to be done by any common carrier subject to the provisions of this act in contravention of the provisions thereof, may apply to said Commission by petition, which shall briefly state the facts; whereupon a statement of the charges thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time, to be specified by the Commission.

Reparation by carriers before investigation. — If such common carrier, within the time specified, shall make reparation for the injury alleged to have been done, said carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of.

Investigations by the Commission. If such carrier shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

Investigations by the Commission. — Said Commission shall in like manner investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory, at the request of such commissioner or commission, and may institute any inquiry on its own motion in the same manner and to the same effect as though complaint had been made.

No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.

§ 14. *Findings of Commission prima facie evidence in judicial proceedings.* — (*As amended.*) That whenever an in-

vestigation shall be made by said Commission, it shall be its duty to make a report in writing in respect thereto, which shall include the findings of fact upon which the conclusions of the Commission are based, together with its recommendation as to what reparation, if any, should be made by the common carrier to any party or parties who may be found to have been injured; and such findings so made shall thereafter, in all judicial proceedings, be deemed *prima facie* evidence as to each and every fact found.

All reports of investigations made by the Commission shall be entered of record, and a copy thereof shall be furnished to the party who may have complained, and to any common carrier that may have been complained of.

Reports and decisions. Authorized publication to be competent evidence. — The commission may provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use, and such authorized publications shall be competent evidence of the reports and decisions of the Commission therein contained, in all courts of the United States, and of the several States, without any further proof or authentication thereof. The Commission may also cause to be printed for early distribution its annual reports.

§ 15. *Notice to common carrier to cease from violation of act.* — That if in any case in which an investigation shall be made by said Commission it shall be made to appear to the satisfaction of the Commission, either by the testimony of witnesses or other evidence, that anything has been done or omitted to be done in violation of the provisions of this act, or of any law cognizable by said Commission, by any common carrier, or that any injury or damage has been sustained by the party or parties complaining, or by other parties aggrieved in consequence of any such violation, it shall be the duty of the Commission to forthwith cause a copy of its report in respect thereto to be delivered to such common carrier, together with a notice to said common carrier to cease and desist from such violation, or to make reparation for the injury so found to have been done, or both, within a reasonable time, to be specified by the Commission; and if, within the time specified, it shall be made to appear to the Commission that such common carrier has ceased from such violation of law, and has made reparation for the injury found to have been done, in compliance with the report and notice of the Commission, or to the satisfaction of

the party complaining, a statement to that effect shall be entered of record by the Commission, and the said common carrier shall thereupon be relieved from further liability or penalty for such particular violation of law.

§ 16. *Petition to United States courts in cases of disobedience to order of Commission.*—(As amended.) That whenever any common carrier, as defined in and subject to the provisions of this act, shall violate, or refuse or neglect to obey or perform any lawful order or requirement of the Commission created by this act, not founded upon a controversy requiring a trial by jury, as provided by the seventh amendment to the Constitution of the United States, it shall be lawful for the Commission or for any company or person interested in such order or requirement, to apply in a summary way, by petition, to the circuit court of the United States sitting in equity in the judicial district in which the common carrier complained of has its principal office, or in which the violation or disobedience of such order or requirement shall happen, alleging such violation or disobedience, as the case may be; and the said court shall have power to hear and determine the matter, or such short notice to the common carrier complained of as the court shall deem reasonable; and such notice may be served on such common carrier, his or its officers, agents, or servants in such manner as the court shall direct.

Power of United States courts to hear and determine cases of disobedience.—And said court shall proceed to hear and determine the matter speedily as a court of equity, and without the formal pleadings and proceedings applicable to ordinary suits in equity, but in such manner as to do justice in the premises; and to this end such court shall have power, if it think fit, to direct and prosecute in such mode and by such persons as it may appoint, all such inquiries as the court may think needful to enable it to form a just judgment in the matter of such petition; and on such hearing the findings of fact in the report of said Commission shall be *prima facie* evidence of the matters therein stated; and if it be made to appear to such court, on such hearing or on report of any such person or persons, that the lawful order or requirement of said Commission drawn in question has been violated or disobeyed,

Writs of injunction or other process against carriers in cases of disobedience.—It shall be lawful for such court to

issue a writ of injunction or other proper process, mandatory or otherwise, to restrain such common carrier from further continuing such violation or disobedience of such order or requirement of said Commission, and enjoining obedience to the same.

Punishment for refusal to obey writs of injunction or proper process. Fine. — And in case of any disobedience of any such writ of injunction or other proper process, mandatory or otherwise, it shall be lawful for such court to issue writs of attachment, or any other process of said court incident or applicable to writs of injunction or other proper process, mandatory or otherwise, against such common carrier, and if a corporation, against one or more of the directors, officers, or agents of the same, or against any owner, lessee, trustee, receiver, or other person failing to obey such writ of injunction, or other proper process, mandatory or otherwise; and said court may, if it shall think fit, make an order directing such common carrier or other person so disobeying such writ of injunction or other proper process, mandatory or otherwise, to pay such sum of money, not exceeding for each carrier or person in default the sum of five hundred dollars for every day, after a day to be named in the order, that such carrier or other person shall fail to obey said injunction or other proper process, mandatory or otherwise; and such moneys shall be payable as the court shall direct, either to the party complaining or into court, to abide the ultimate decision of the court, or into the Treasury; and payment thereof may, without prejudice to any other mode of recovering the same, be enforced by attachment or order in the nature of a writ of execution, in like manner as if the same had been recovered by a final decree *in personam* in such court.

Appeals to Supreme Court of United States. — When the subject in dispute shall be of the value of two thousand dollars or more, either party to such proceeding before said court may appeal to the Supreme Court of the United States, under the same regulations now provided by law in respect of security for such appeal; but such appeal shall not operate to stay or supersede the order of the court or the execution of any writ or process thereon; and such court may, in every such matter, order the payment of such costs and counsel fees as shall be deemed reasonable. Whenever any such petition shall be filed or presented by the Commission it shall be the duty of the district attorney, under the direction of the Attorney-General of the United States, to

prosecute the same ; and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Petition to limit States Courts in cases of disobedience when trial by jury is necessary.—If the matters involved in any such order or requirement of said Commission are founded upon a controversy requiring a trial by the jury, as provided by the seventh amendment to the Constitution of the United States, and any such common carrier shall violate or refuse or neglect to obey or perform the same, after notice given by said Commission as provided in the fifteenth section of this act, it shall be lawful for any company or person interested in such order or requirement to apply in a summary way by petition to the circuit court of the United States sitting as a court of law in the judicial district in which the carrier complained of has its principal office, or in which the violation or disobedience of such order or requirements shall happen, alleging such violation or disobedience as the case may be ; and said court shall by its order then fix a time and place for the trial of said cause, which shall not be less than twenty, nor more than forty days from the time said order is made, and it shall be the duty of the marshal of the district in which said proceeding is pending to forthwith serve a copy of said petition, and of said order, upon each of the defendants, and it shall be the duty of the defendants to file their answers to said petition within ten days after the service of the same upon them as aforesaid.

Trial by jury. Trial by court.—At the trial the findings of fact of said Commission as set forth in its report shall be *prima facie* evidence of the matters therein stated, and if either party shall demand a jury or shall omit to waive a jury the court shall, by its order, direct the marshal forthwith to summon a jury to try the cause ; but if all the parties shall waive a jury in writing, then the court shall try the issues in said cause and render its judgment thereon.

Appeals to Supreme Court of United States.—If the subject in dispute shall be of the value of two thousand dollars or more either party may appeal to the Supreme Court of the United States under the same regulations now provided by law in respect to security for such appeal must be taken within twenty days from the day of the rendition of the judgment of said circuit court.

Counsel or attorney's fees.—If the judgment of the circuit court shall be in favor of the party complaining, he or they shall be entitled to recover a reasonable counsel or attorney's fee, to be fixed by the court, which shall be collected as part of the costs in the case. For the purposes of this act, excepting its penal provisions, the circuit court of the United States shall be deemed to be always in session.

§ 17. *Interstate Commerce Commission. Form of procedure.*—(As amended.) That the Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice. A majority of the Commission shall constitute a quorum for the transaction of business, but no Commissioner shall participate in any hearing or proceeding in which he has any pecuniary interest. Said Commission may, from time to time, make or amend such general rules or orders as may be requisite for the order and regulation of proceedings before it, including forms of notices and the service thereof, which shall conform, as nearly as may be, to those in use in the courts of the United States. Any party may appear before said Commission and be heard, in person or by attorney. Every vote and official act of the Commission shall be entered of record, and its proceedings shall be public upon the request of either party interested.

Official seal.—Said Commission shall have an official seal, which shall be judicially noticed. Either of the members of the Commission may administer oaths and affirmations and sign subpoenas.

§ 18. *Salaries of Commissioners.*—(As amended.) That each Commissioner shall receive an annual salary of seven thousand five hundred dollars, payable in the same manner as the judges of the court of the United States.

Secretary—How appointed; salary.—The Commission shall appoint a secretary, who shall receive an annual salary of three thousand five hundred dollars, payable in like manner. The Commission shall have authority to employ and fix the compensation of such other employees as it may find necessary to the proper performance of its duties.

Offices and supplies.—Until otherwise provided by law, the Commission may hire suitable offices for its use, and shall have authority to procure all necessary office supplies.

Witnesses' fees.—Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in all the courts of the United States.

Expenses of the Commission—how paid.—All of the expenses of the Commission, including all necessary expenses for transportation incurred by the Commissioners, or by their employees under their orders, in making any investigation, or upon official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman of the Commission.

§ 19. *Sessions of the Commission.* That the principal office of the Commission shall be in the city of Washington, where its general sessions shall be held; but whenever the convenience of the public or the parties may be promoted or delay or expense prevented thereby, the Commission may hold special sessions in any part of the United States. It may, by one or more of the Commissioners, prosecute any inquiry necessary to its duties, in any part of the United States, into any matter or question of fact pertaining to the business of any common carrier subject to the provisions of this act.

§ 20. *Carriers subject to the act must render full annual reports to Commission.*—That the Commission is hereby authorized to require annual reports from all common carriers subject to the provisions of this act, to fix the time and prescribe the manner in which such reports shall be made, and to require from such carriers specific answers to all questions upon which the Commission may need information. Such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor, and the manner of payment for the same; the dividends paid, the surplus fund, if any, and the number of stockholders; the funded and floating debts and the interest paid thereon; the cost and value of the carrier's property; franchises, and equipments; the number of employees and the salaries paid each class; the amounts expended for improvements each year, how expended, and the character of such improvements; the earnings and receipts from each branch of business and from all sources; the operating and other expenses; the balances of profit and loss; and a complete exhibit of the financial operations of the carrier each year, including an annual balance-sheet. Such reports shall also contain such information in relation to rates or

regulations concerning fares or freights, or agreements, arrangements, or contracts with other common carriers as the Commission may require.

Commission may prescribe methods of keeping accounts.—And the said Commission may, within its discretion, for the purpose of enabling it the better to carry out the purposes of this act, prescribe (if in the opinion of the Commission it is practicable to prescribe such uniformity and methods of keeping accounts) a period of time within which all common carriers subject to the provisions of this act shall have, as near as may be, a uniform system of accounts, and the manner in which such accounts shall be kept.

§ 21. *Annual reports of the Commission to Congress. (As amended.)*—That the Commission shall, on or before the first day of December in each year, make a report, which shall be transmitted to Congress, and copies of which shall be distributed as are the other reports transmitted to Congress. This report shall contain such information and data collected by the Commission as may be considered of value in the determination of questions connected with the regulation of commerce, together with such recommendations as to additional legislation relating thereto as the Commission may deem necessary; and the names and compensation of the persons employed by said Commission.

§ 22. *(As amended.) Persons and property that may be carried free or at reduced rates. Mileage, excursion, or commutation passenger tickets.*—That nothing in this act shall prevent the carriage, storage, or handling of property free or at reduced rates for the United States, State, or municipal governments, or for charitable purposes, or to or from fairs and exhibitions for exhibition thereat, or the free carriage of destitute and homeless persons transported by charitable societies, and the necessary agents employed in such transportation, or the issuance of mileage, excursion, or commutation passenger tickets; nothing in this act shall be construed to prohibit any common carrier from giving reduced rates to ministers of religion, or to municipal governments for the transportation of indigent persons, or to inmates of the National Homes or State Homes for Disabled Volunteer Soldiers, and of Soldiers' and Sailors' Orphan Homes, including those about to enter and those returning home after discharge, under arrangements with the boards of managers of said homes.

Passes and free transportation to officers and employees of railroad companies. Pending litigation not affected by act.—Nothing in this act shall be construed to prevent railroads from giving free carriage to their own officers and employees, or to prevent the principal officers of any railroad company or companies from exchanging passes or tickets with other railroad companies for their officers and employees; and nothing in this act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this act are in addition to such remedies: *Provided*, That no pending litigation shall in any way be affected by this act.

(*New section.*) *Jurisdiction of United States courts to issue writs of peremptory mandamus commanding the movement of interstate traffic or the furnishing of cars or other transportation facilities.*—That the circuit and district courts of the United States shall have jurisdiction upon the relation of any person or persons, firm, or corporation, alleging such violation by a common carrier, of any of the provisions of the act to which this is a supplement and all acts amendatory thereof, as prevents the relator from having interstate traffic moved by said common carrier at the same rates as are charged, or upon terms or conditions as favorable as those given by said common carrier for like traffic under similar conditions to any other shipper, to issue a writ or writs of mandamus against said common carrier, commanding such common carrier to move and transport the traffic, or to furnish cars or other facilities for transportation for the party applying for the writ: *Provided*, That if any question of fact as to the proper compensation to the common carrier for the service to be enforced by the writ is raised by the pleadings, the writ of peremptory mandamus may issue, notwithstanding such question of fact is undetermined, upon such terms as to security, payment of money into the court, or otherwise, as the court may think proper, pending the determination of the question of fact: *Provided*, That the remedy hereby given by writ of mandamus shall be cumulative, and shall not be held to exclude or interfere with other remedies provided by this act or the act to which it is a supplement.

AMENDMENT TO INTERSTATE COMMERCE ACT.

RAILROADS MUST EQUIP CARS WITH AUTOMATIC COUPLERS AND CONTINUOUS AIR-BRAKES, AND LOCOMOTIVES WITH DRIVING-WHEEL BRAKES, ETC.—ACT OF 1893.

§ 1. *Unlawful to move rolling stock not equipped with air-brakes, etc.*—That from and after the first day of January, eighteen hundred and ninety-eight, it shall be unlawful for any common carrier engaged in interstate commerce by railroad to use on its line any locomotive engine in moving interstate traffic not equipped with a power driving-wheel brake and appliances for operating the train-brake system, or to run any train in such traffic after said date that has not a sufficient number of cars in it so equipped with power or train-brakes that the engineer on the locomotive drawing such train can control its speed without requiring brakemen to use the common hand brake for that purpose.

§ 2. *Carriers not to haul cars unless properly equipped.*—That on and after the first day of January, eighteen hundred and ninety-eight, it shall be unlawful for any such common carrier to haul or permit to be hauled or used on its line any car used in moving interstate traffic not equipped with couplers coupling automatically by impact, and which can be uncoupled without the necessity of men going between the ends of the cars.

§ 3. *May refuse cars from other lines if not properly equipped.*—That when any person, firm, company, or corporation engaged in interstate commerce by railroad shall have equipped a sufficient number of its cars so as to comply with the provisions of section one of this act, it may lawfully refuse to receive from connecting lines of road or shippers any cars not equipped sufficiently, in accordance with the first section of this act, with such power or train brakes as will work and readily interchange with the brakes in use on its own cars, as required by this act.

§ 4. *Grab-irons or hand-holds to be provided.*—That from and after the first day of July, eighteen hundred and ninety-five, until otherwise ordered by the Interstate Commerce Commission, it shall be unlawful for any railroad company to use any car in interstate commerce that is not provided with secure grab-irons or hand-holds in the ends and sides of each car for greater security to men in coupling and uncoupling cars.

§ 5. *American Railway Association to designate drawbars for freight cars.*—That within ninety days from the passage of this act the American Railway Association is authorized hereby to designate to the Interstate Commerce Commission the standard height of drawbars for freight cars, measured perpendicular from the level of the tops of the rails to the centers of the drawbars, for each of the several gauges of railroad in use in the United States, and shall fix a maximum variation from such standard height to be allowed between the drawbars of empty and loaded cars. Upon their determination being certified to the Interstate Commerce Commission, said commission shall at once give notice of the standard fixed upon to all common carriers, owners, or lessees engaged in interstate commerce in the United States by such means as the commission may deem proper. But should said association fail to determine a standard as above provided, it shall be the duty of the Interstate Commerce Commission to do so, before July first, eighteen hundred and ninety-four, and immediately to give notice thereof as aforesaid. And after July first, eighteen hundred and ninety-five, no cars either loaded or unloaded, shall be used in interstate traffic which do not comply with the standard above provided for.

§ 6. *Penalty for violation of the provisions of this act.*—That any such common carrier using any locomotive engine, running any train, or hauling or permitting to be hauled or used on its line any car in violation of any of the provisions of this act, shall be liable to a penalty of one hundred dollars for each and every such violation, to be recovered in a suit or suits to be brought by the United States district attorney in the district court of the United States having jurisdiction in the locality where such violation shall have been committed, and it shall be the duty of such district attorney to bring such suits upon duly verified information being lodged with him of such violation having occurred. And it shall be duty of the Interstate Commerce Commission to lodge with the proper district attorneys information of any such violations as may come to its knowledge: Provided: That nothing in this act contained shall apply to trains composed of four-wheel cars or to locomotives used in hauling such trains.

§ 7. *Power of Interstate Commerce Commission to extend time of carriers to comply with this act.*—That the Interstate Commerce Commission may from time to time upon full hearing

and for good cause extend the period within which any common carrier shall comply with the provisions of this act.

§ 8. *Employes not deemed to assume risk of employment.*— That any employe of any such common carrier who may be injured by any locomotive, car or train in use contrary to the provision of this act shall not be deemed thereby to have assumed, the risk thereby occasioned, although continuing in the employment of such carrier after the unlawful use of such locomotive, car or train had been brought to his knowledge.

INDEX TO CHAPTER X—INTERSTATE COM- MERCE ACT.

	SEC.	PAGE
Accounts, Commission may prescribe methods of keeping.....	20	432
Act, carriers and transportation subject to	1	412
Advantage or preference, undue or unreasonable.....	3	414
Advance in rates, ten days' public notice of, to be given.....	6	416
in joint rates, ten days' notice to Commission.....	6	417
Agreements and contracts, copies of, to be filed with Commission..	6	416
Annual reports of the Commission, publication and distribution of..	14	426
of the Commission to Congress.....	21	432
to Commission from carriers.....	20	431
Appeals to the Supreme Court of the United States	16	428
Books and papers, production of.....	12	423
Carrier, notice to, to cease from violation of act.....	15	426
Carriers subject to the act... ..	1	412
Carriers subject to the act must render full annual reports to Com- mission.....	20	431
Charges to be reasonable.....	1	413
Commission—(see Interstate Commerce Commission).		
Commutation, mileage, or excursion passenger tickets.....	22	432
Complaints to Commission. How and by whom made.....	13	425
Compliance with notice to cease from violation of act.....	15	426
Continuous carriage of freights not to be unnecessarily interrupted..	7	418
Contracts and agreements, copies of, to be filed with the Commission.	6	416
Counsel or attorney's fees.....	16	430
Damages, liabilities of common carriers for.....	8	419
joint liability for, when unjust discrimination is induced.....	10	421
Discrimination, unjust, forbidden....	2	413
penalties for inducing by common carriers: Fine and impris- onment. Joint liability with carrier for damages	10	421
Division of earnings and pooling of freights forbidden.....	5	415
Earnings, division of, and pooling of freight forbidden... ..	5	415
Evidence, authorized publication of reports and decisions competent.	14	426
findings of Commission <i>prima facie</i>	14	425
officers, etc., of defendant may be compelled to give.....	9	419
power of the Commission to require attendance of witnesses and production of books and papers.....	12	423

	SEC.	PAGE
Excursion, mileage, or commutation passenger tickets.....	22	432
Expenses of the Commission... ..	18	431
Facilities for interchange of traffic.....	3	414
False billing, etc., penalties for, by shippers and other persons; Fine and imprisonment.....	10	420
penalties for, by carriers, their officers, or agents; Fine and imprisonment.....	10	420
Fees, counsel or attorneys... ..	16	430
witnesses.....	18	431
Findings of Commission <i>prima facie</i> evidence in judicial proceedings.	14	425
Free transportation of persons and property, when allowed.....	22	432
to officers and employes of railroad companies....	22	433
Freight, pooling of, and division of earnings forbidden.....	5	415
Injunction, writs of, or other process, against carriers in cases of disobedience.....	16	427
writs of, or other proper process, punishment for refusal to obey; fine.....	16	428
Interchange of traffic, facilities for... ..	3	414
Interstate Commerce Commission, annual report of, to Congress....	21	432
to, from carriers.....	20	431
complaints to.....	13	425
copies of agreements and contracts to be filed with.....	6	416
expenses of.....	18	431
findings of, <i>prima facie</i> evidence.....	14	425
form of procedure.....	17	430
investigation by.....	13	425
may prescribe forms of schedules of rates, etc.....	6	418
may prescribe methods of keeping accounts.....	20	432
offices and supplies.....	18	430
official seal of.....	17	430
power of, to compel attendance of witnesses and production of books and papers.....	12	423
Interstate Commerce Commission, power of, to inquire into busi- ness of carriers.....	12	422
power of, to make public advances or reductions in rates.	6	417
power of, to prescribe publicity in joint rates, etc... .	6	417
principal office of.....	19	431
publication and distribution of annual reports of.....	14	426
required to enforce the provisions of the act.....	12	422
secretary of.....	18	430
sessions of.....	19	431
Interstate Commerce Commissioners, how appointed.....	11	422
salaries of.....	18	430
terms of.....	11	422
Investigations by Commission.....	13	425
Joint liability with carriers for damages when unjust discrimina- tion is induced.	10	421
Joint rates, fares and charges not to be deviated from.....	6	417

	SEC.	PAGE
Joint rates, fares and charges, ten days' notice of advance in, to be given the Commission	6	417
Joint rates, fares and charges, three days' notice of reduction in, to be given the Commission	6	417
Joint tariffs to be filed with Commission	6	416
Jurisdiction of United States courts to issue writs of peremptory mandamus commanding the movement of interstate traffic or the furnishing of cars or other transportation facilities . . . (N. S.)		433
Liability of common carriers for damages	8	419
joint, with common carriers for damages when unjust discrimination is induced	10	421
Litigation, pending, not affected by act	22	433
Long and short haul provision	4	414
Mandamus, writs of peremptory, commanding movement of interstate traffic or furnishing of cars, etc. (N. S.)		433
Mileage, excursion or commutation passenger tickets	22	432
Notice, ten days' public, of advance in rates to be given	6	416
Notice, ten days', to Commission of advance in joint rates, fares and charges	6	417
Notice, three days' public, of reduction in rates to be given	6	416
Notice, three days', to Commission, of reduction in joint rates, fares and charges	6	417
Notice to common carrier to cease from violation of act	15	426
Officers, etc., of defendant may be compelled to testify	9	419
Offices and supplies	18	430
Official seal	17	430
Passes and free transportation to officers and employes of railroad companies	22	433
Penalties for false billing, etc., by shippers and other persons: Fine and imprisonment	10	421
for false billing, etc., by carriers, their officers or agents: Fine and imprisonment	10	420
for inducing common carriers to discriminate unjustly: Fine and imprisonment. Joint liability with carrier for damages . . .	10	421
for neglecting or refusing to file or publish rates, fares and charges	6	418
for violations of act by carriers, their officers or agents: Fine and imprisonment	10	420
Pending litigation not affected by act	22	433
Persons and property that may be carried free or at reduced rates . .	23	432
Persons claiming to be damaged may complain to Commission or bring suit in United States courts	9	419
Petition to United States courts in cases of disobedience to order of Commission	16	427
to United States courts in cases of disobedience when trial by jury is necessary	16	429
Pooling of freights and division of earnings forbidden	5	415

	SEC.	PAGE
Preference or advantage, undue or unreasonable, forbidden....	3	414
Principal office of the Commission.....	19	431
Printing and posting of schedule of rates on freight carried through a foreign country.....	6	415
Printing and posting of schedules of rates, fares, and charges.....	6	415
Property that may be carried free or at reduced rates..	22	432
Provision, long and short haul.....	4	414
Publication and distribution of annual reports of Commission....	14	426
Publicity, power of the Commission to prescribe.....	6	417
Published rates not to be deviated from.....	6	416
Punishment for refusal to obey writs of injunction or other proper process: Fine.....	16	428
for refusal to testify or produce books and papers.....	12	424
"Railroad," what the term includes.....	1	413
Rates, fares, and charges, Commission may prescribe forms of sched- ules of.....	6	418
copies of schedules of, to be filed with Commission....	6	416
penalties for neglecting or refusing to file or publish..	6	418
printing and posting of schedules of.....	6	415
Rates, joint, not to be deviated from.....	6	417
Rates, printing and posting of schedules of, on freight carried through a foreign country..	6	415
published, not to be deviated from	6	416
when persons and property may be carried at reduced.....	22	432
Reasonable charges.....	1	413
Reduced rates, when persons and property may be carried at.....	22	432
Reduction in rates, three days' public notice of, to be given.....	6	416
in joint rates, three days' notice to commission	6	417
Reparation by carrier after notice to cease from violation of act....	15	426
by carrier before investigation.....	13	426
Reports and decisions of Commission. Authorized publication to be competent evidence	14	426
Salaries of Commissioners.....	18	430
Schedules, copies of, of rates, fares and charges to be filed with Commission	6	416
Schedules of rates, fares, and charges, Commission may prescribe forms of	6	418
printing and posting of.....	6	415
Schedules of rates, printing and posting of, on freight carried through a foreign country.....	6	415
Secretary — how appointed; salary.....	18	430
Sessions of the Commission	19	431
Short and long haul provision	4	414
Supreme Court of the United States, appeals to.....	16	429
Tariffs to be filed with Commission.....	6	416
Ten days' notice to Commission of advance in joint rates, fares and charges.....	6	417
public notice of advance in rates to be given	6	416

	SEC.	PAGE
Terms of Commissioners.....	11	422
Three days' notice to Commission of reduction in joint rates, fares, and charges.....	6	417
public notice of reduction in rates to be given.....	6	416
Transportation subject to the act.....	1	412
"Transportation," what the term includes..	1	413
Trial by court.....	16	429
by jury.....	16	429
Undue or unreasonable preference or advantage forbidden.....	3	414
United States Courts, jurisdiction of, to issue writs of peremptory mandamus, commanding the movement of interstate traffic, or the furnishing of cars or other transportation facilities.....(N. S.)		433
persons claiming to be damaged may bring suits in.....	9	419
United States courts, petition to, in cases of disobedience to order of Commission.....	16	427
petition to, in cases of disobedience, when trial by jury is neces- sary.....	16	429
power of, to hear and determine cases of disobedience.....	16	427
Unjust discrimination forbidden ...	2	413
Witnesses, attendance of, and production of books and papers by..	12	423
fees of.....	18	431
Writs of injunction or other process against carriers in cases of disobedience.....	16	427
peremptory mandamus commanding movement of traffic, fur- nishing of cars, etc.....(N. S.)		433

CHAPTER XI.

THE AMENDMENTS OF 1893 TO THE CORPORATION AND RAILROAD LAWS.

CORPORATION LAWS.

- SECTION 1. Proceedings to change the name of a corporation.
2. Corporate powers.
3. Meeting to increase or reduce capital stock.

THE RAILROAD LAW.

4. Corporate powers.
5. The same.
6. The same.
7. Street surface railroads.
8. The same.
9. The same.
10. Bridge companies may lay tracks.
11. Certificates of incorporation.
12. Grade crossings.
13. Safety appliances.
14. Automatic couplers.
15. Relief of street surface railroad companies.
16. Weekly payment of wages.
17. Hours of service on railroads.
18. Protection of game.
19. Protection of Adirondack park.
20. Sale of liquors by common carriers.
21. Employment of intemperate persons.
22. Stockholders' meetings ; rights of municipal corporations.
23. Penal Code.
24. Public health.

§ 1. PROCEEDINGS TO CHANGE THE NAME OF A CORPORATION. LAWS OF 1893, CHAP. 366.

§ 2411. *Petition by corporation*.—A petition to assume another corporate name may be made by a domestic corporation, whether incorporated by a general or special law, to the supreme court at a special term thereof, held in the judicial district in which its principal business office shall be situated, or, if it be other than a stock corporation, at a special term held in the judicial district in which its certificate of incorporation is filed or recorded, or in which its principal property is situated, or in which its principal

operations are or theretofore have been conducted. If it be a banking, insurance or railroad corporation, the petition must be authorized by a resolution of the directors of the corporation, and approved, if a banking corporation, by the superintendent of banks; if an insurance corporation, by the superintendent of insurance, and if a railroad corporation, by the board of railroad commissioners. The petition to change the name of any other corporation must have annexed thereto a certificate of the secretary of state, that the name which such corporation proposes to assume is not the name of any other domestic corporation or a name which he deems so nearly resembling it, as to be calculated to deceive. (*Thus amended by chap. 366, Laws 1893.*)

§ 2412. *Contents of petition.*—The petition must be in writing, signed by the petitioner and verified in like manner as a pleading in a court of record, and must specify the grounds of the application, the name, age and residence of the individual whose name is proposed to be changed, and the name which he proposes to assume, and if the petitioner be a corporation, its present name, and the name it proposes to assume, which must not be the name of any other corporation, or a name so nearly resembling it as to be calculated to deceive; and if it be a railroad corporation, a corporation having banking powers or the power to make loans upon pledges or deposits, or to make insurances, that the petition has been duly authorized by a resolution of the directors of the corporation and approved by the proper officer. (*Thus amended by chap. 366, Laws 1893.*)

§ 2413. *Notice of presentation of petition.*—If the petition be to change the name of an infant, and is made by the infant's next friend, notice of the time and place at which the petition will be presented, must be served upon the father, or if he is dead or can not be found, upon the general guardian of the person of the infant, in like manner as a notice of a motion upon an attorney in an action, unless it appears to the satisfaction of the court that the infant has no father or mother, or that both reside without the state or can not be found, and that he has no guardian residing within this state, in which case the court may dispense with notice or require notice to be given to such persons and in such manner as the court thinks proper. If the petition be made by a corporation located elsewhere than in the city and county of New York, notice of the presentation thereof shall be published for six weeks in the paper

at Albany in which notices by state officers are authorized by law to be published, and in a newspaper of every county in which such corporation shall have a business office, or if it has no business office, of the county in which its principal corporate property is situated or in which its operations are or theretofore have been principally conducted, which newspaper, if it be a banking corporation, shall be designated by the superintendent of banks, if an insurance corporation, by the superintendent of insurance, or if a railroad corporation, by the railroad commissioners. In the city and county of New York such notice shall be published for six weeks in two daily newspapers published in such county. (*Thus amended by chap. 366, Laws 1893.*)

§ 2414. *Order.*—If the court to which the petition is presented is satisfied thereby, or by the affidavit and certificate presented therewith, that the petition is true, and that there is no reasonable objection to the change of name proposed, and if the petition be to change the name of an infant, that the interests of the infant will be substantially promoted by the change, and, if the petitioner be a corporation, that the petition has been duly authorized and that notice of the presentation of the petition, if required by law, has been made, the court shall make an order authorizing the petitioner to assume the name proposed on a day specified therein, not less than thirty days after the entry of the order. The order shall be directed to be entered and the papers on which it was granted to be filed within ten days thereafter in the clerk's office of the county in which the petitioner resides if he be an individual, or in the office of the clerk of the court of common pleas of the city and county of New York if the order be made by that court, or in the office of the clerk of the city court of New York if the order be made by that court, or, if the petitioner be a corporation, in the office of the clerk of the county in which its certificate of incorporation, if any, shall be filed, or if there be none filed, in which its principal office shall be located, or if it has no business office, in the county in which its principal property is situated, or in which its operations are or theretofore have been principally conducted, or in the office of the clerk of the county in which the special term granting the order is held; and if the petitioner be a corporation, that a certified copy of such order shall, within ten days after the entry thereof, be filed in the office of the secretary of state; and also, if it be a banking corporation, in the office of

the superintendent of banks, or if it be an insurance corporation, in the office of the superintendent of insurance, or if it be a railroad corporation, in the office of the board of railroad commissioners. Such order shall also direct the publication, within ten days after the entry thereof of a copy thereof in a designated newspaper, in the county in which the order is directed to be entered, at least once if the petitioner be an individual, or if the petitioner be a corporation, once in each week for four successive weeks. The county clerk, in whose office an order changing the name of a corporation is entered, shall record the same at length in the book kept in his office for recording certificates of incorporation. (*Thus amended by chap. 366, Laws 1893.*)

§ 2415. *When change to take effect.* — If the order shall be fully complied with, and within twenty days after the making of the order, an affidavit of the publication thereof shall be filed and recorded in the office in which the order is entered, and in each office in which certified copies thereof are required to be filed, if any, the petitioner shall, on and after the day specified for that purpose in the order, be known by the name which he is thereby authorized to assume, and by no other name.

§ 2416. *Substitution of new name in pending action or proceeding.* — An action or special proceeding, civil or criminal, commenced by or against a person whose name is so changed shall not abate, nor shall any relief, recovery or other proceeding therein be prevented, impeded or impaired in consequence of such change of name. The plaintiff in the action or the party instituting the special proceeding, or the people, as the case requires, may, at any time, obtain an order amending any of the papers or proceedings therein, by the substitution of the new name, without costs and without prejudice to the action or proceeding. (*Thus amended by chap. 366, Laws 1893.*)

§ 2417. *Reports by clerks to state officers.* — The clerk of each county and of each court, shall annually, in the month of December, report to the secretary of state all changes of names of individuals or of corporations, which have been made in pursuance of orders filed in their respective offices during the past year and since the last previous report, and also report in like manner to the superintendent of banks all changes of the names of banking corporations, and to the superintendent of insurance all changes of names of corporations authorized to make insurances. The secretary of state must cause to be published, in the next

volume of the session laws a tabular statement showing the original name of each person and corporation and the name which he or it has been authorized to assume. (*Thus amended by chap. 366, Laws 1893.*)

§ 2. CORPORATE POWERS. LAWS OF 1893, CHAP. 638.

§ 33. *Sale of franchise and property.*—A stock corporation, except a railroad corporation and except as otherwise provided by law, with the consent of two-thirds of its stock, may sell and convey its property, rights, privileges and franchises, or any interest therein or any part thereof to a domestic corporation, engaged in a business of the same general character, or which might be included in the certificate of incorporation of a corporation organizing under any general law of this state for a business of the same general character; and such sale and conveyance shall vest the rights, property and franchises thereby transferred in the corporation to which they are conveyed for the term of its corporate existence, subject to the provisions and restrictions applicable to the corporation conveying them. Before such sale or conveyance shall be made such consent shall be obtained at a meeting of the stockholders called upon like notice as that required for an annual meeting. If any stockholder not voting in favor of such proposed sale or conveyance shall at such meeting, or within twenty days thereafter object to such sale, and demand payment for his stock, he may, within sixty days after such meeting, apply to the supreme court at any special term thereof held in the district in which the principal place of business of such corporation is situated, upon eight days notice to the corporation, for the appointment of three persons to appraise the value of such stock, and the court shall appoint three such appraisers, and designate the time and place of their proceedings as shall be deemed proper, and also direct the manner in which payment for such stock shall be made to such stockholder. The court may fill any vacancy in the board of appraisers occurring by refusal or neglect to serve or otherwise. The appraisers shall meet at the time and place designated, and they or any two of them, after being duly sworn honestly and faithfully to discharge their duties, shall estimate and certify the value of such stock at the time of such dissent, and deliver one copy to such corporation, and another to such stockholder if demanded; the charges and expenses of the appraisers shall be paid by the corporation. When the corpor-

ation shall have paid the amount of such appraisal, as directed by the court, such stockholders shall cease to have any interest in such stock and in the corporate property of such corporation and such stock may be held or disposed of by such corporation. (*This section added by chap. 638, Laws 1893.*)

§ 3. MEETING TO INCREASE OR REDUCE CAPITAL STOCK.
LAWS OF 1893, CHAPTERS 196 AND 700.

§ 45. *Notice of meeting to increase or reduce capital stock.*—Every such increase or reduction must be authorized by a vote of the stockholders owning at least a majority of the stock of the corporation, taken at a meeting of the stockholders specially called for that purpose. Notice of the meeting, stating the time, place and object, and the amount of the increase or reduction proposed, signed by a majority of the directors, shall be published once a week, for at least two successive weeks, in a newspaper in the county where its principal business office is located, if any is published therein, and a copy of such notice shall be personally served upon or duly mailed to each stockholder or member at his last-known post-office address at least three weeks before the meeting.

§ 46. *Conduct of such meeting ; certificate of increase or reduction.*—If, at the time and place specified in the notice, the stockholders shall appear in person or by proxy, in numbers representing at least a majority of all the shares of stock, they shall organize by choosing from their number a chairman and secretary, and take a vote of those present in person or by proxy, and if a sufficient number of votes shall be given in favor of such increase or reduction, a certificate of the proceedings, showing a compliance with the provisions of this chapter, the amount of capital actually paid in, the whole amount of debts and liabilities of the corporation, and the amount of the increased or reduced capital stock, shall be made, signed, verified and acknowledged by the chairman and secretary of the meeting, and filed in the office of the clerk of the county where its principal place of business shall be located, and a duplicate thereof in the office of the secretary of state. In case of a reduction of the capital stock, except of a railroad corporation, or a monied corporation, such certificate shall have indorsed thereon the approval of the comptroller, to the effect that the reduced capital is sufficient for the proper purposes of the corporation, and in excess of its debts and liabilities, and in case

of the increase, or reduction of the capital stock of a railroad corporation, or a monied corporation, the certificate shall have indorsed thereon the approval of the board of railroad commissioners, if a railroad corporation; of the superintendent of banks, if a corporation formed under or subject to the banking law; and of the superintendent of insurance, if an insurance corporation.

When the certificate herein provided for has been filed, the capital stock of such corporation shall be increased or reduced, as the case may be, to the amount specified in such certificate. The proceedings of the meeting at which such increase or reduction is voted, shall be entered upon the minutes of the corporation. If the capital stock is reduced, the amount of capital over and above the amount of the reduced capital shall be returned to the stockholders *pro rata* at such times and in such manner as the directors shall determine. (*Thus amended by chap. 700, Laws of 1893.*)

§ 56. *Increase or reduction of number of shares.*—A stock corporation may provide that the number of shares into which its capital stock is divided shall be increased or reduced by a two-thirds vote of all stock duly represented at a meeting held and conducted in like manner, and upon filing a like certificate, as required for the increase or reduction of its capital stock. If such increase or reduction of the number of shares be so authorized, the corporation shall issue to each stockholder certificates for as many shares of the new stock as equal in par value the shares of the old stock held by him, upon surrender and cancellation of such old stock. This section does not authorize the increase or reduction of the capital stock of such corporation. (*This section added by chap. 196, Laws 1893.*)

§ 4. THE RAILROAD LAW. CORPORATE POWERS, LAWS OF 1893, CHAP 433.

§ 5. *When corporate powers to cease.*—If any domestic railroad corporation shall not, within five years after its certificate of incorporation is filed, begin the construction of its road and expend thereon ten per centum of the amount of its capital, or shall not finish its road and put it in operation in ten years from the time of filing such certificate, its corporate existence and powers shall cease. But if any such steam railroad corporation whose certificate of incorporation was filed since the year eighteen hun-

dred and eighty, and whose road as designated in such certificate is wholly within one county and not more than ten miles in length, has acquired the real property necessary for its road-bed by purchase, its corporate existence and powers shall not be deemed to have ceased because of its failure to comply with the provisions of this article; and the time for beginning the construction of its road, and expending thereon ten per centum of its capital, is extended until thirteen years from the date of the filing of such certificate and the time for finishing its road and putting it in operation, is extended until eighteen years from the date of such filing. (*Thus amended by chap. 433, Laws 1893.*)

§ 5. THE SAME. LAWS OF 1893, CHAP. 316.

§ 16. *Tunnel railroads.*—When, according to the route and plan for the building of its road, adopted by any railroad corporation, including corporations organized under chapter one hundred and forty of the laws of eighteen hundred and fifty, and the acts amendatory thereof and supplementary thereto, it shall be necessary or proper to build it or any part of it underground, or to tunnel or bridge any river or waters, such corporation may enter upon, acquire title to and use such lands under water and uplands, except on or along any canals of the state, as shall be necessary for the purpose herein mentioned, and may construct, erect and secure the necessary foundations and other structures which may be required for operating and maintaining such road or connecting the same with another, and to acquire, in the manner provided by law, such land or rights of easements in lands along its route, upon, over and beneath the surface thereof as may be necessary for the construction of its road and making such connections. Where such road runs underneath the ground, at such depth as to enable the corporation to tunnel the same, such tunnel shall be so built and at all times kept in such condition as to make the surface of the ground above the same and in the neighborhood thereof firm and safe for buildings and other erections thereon and if surface excavations are made the surface shall be restored to its former condition as soon as can be done, except so far as may be actually required for ventilation of the tunnel beneath the same or access thereto. Such road or any part of it may be built within the limits of any city or incorporated village of this state and run by means of a tunnel underneath any of the streets, roads or public places thereof, provided such corporation shall,

before constructing the same underneath any such street, road or public place, have obtained the consent of the owners of one half in value of the property bounded on the line of such street, road or public place, and the consent of the board of trustees of the village, by a resolution adopted at a regular meeting and entered on the records of the board, or of the proper authorities of the city having control of such streets, roads or public places. If the consent of such property-owners can not be obtained, the general term of the supreme court in the district in which said city or village or any part thereof is situated, may upon application appoint three commissioners, who shall determine, after a hearing of all parties interested, whether such railroad ought to build underneath such streets, roads or public places, or any of them, and in what manner the same may be so built with the least damage to the surface, and to the use of the surface by the public, and the determination of the commissioners confirmed by the court may be taken in lieu of the consent of the property owners. All railroad corporations constructing their road under this section shall be subject to all the provisions of this chapter applicable thereto. Any other railroad corporation may connect its road therewith, at such points or places as it may elect, and where such connections shall be made by connecting roads, the road corporations owning such roads shall build, at their joint expense, and for their joint use, such passenger and freight depots, and other accommodations for handling passengers and freight, as may be required for the convenience of the public. All railroad corporations constructing any tunnel under this section, shall be liable to any person or corporation for all damages which may be sustained by reason of the construction of such tunnel. Whenever it shall be necessary in constructing any railroad authorized by this section through any city or incorporated village, to alter the position or course of any sewer, or water or gas pipes, it shall be done at the expense of the railroad corporation under the direction of the department or corporation having charge thereof, so as not to interfere with such work. In all cases the uses of streets, docks and lands beneath which such railroad is constructed, and on the route thereof and the right of way beneath the same, for the purpose of such railroad, shall be considered, and is hereby declared, a public use, consistent with and one of the uses for which streets and docks are publicly held. No public park or square in any city or village of this state shall be used

or occupied by any corporation for any of the purposes of this section, and every road constructed hereunder in or through any such street or public place shall be wholly underground and constructed in a tunnel and not otherwise, but nothing in this section shall operate to revive any charter or franchise heretofore granted by or in the city of Brooklyn. This act does not authorize the construction of any bridge over or across the East or North rivers. (*Thus amended by chap. 316, Laws 1893.*)

§ 6. THE SAME. LAWS OF 1893, CHAPTER 433.

§ 78. *Lease of road.*—Any railroad corporation, or any corporation owning or operating any railroad or railroad route within this state, may contract with any other such corporation for the use of their respective roads or routes, or any part thereof, and thereafter use the same in such manner and for such time as may be prescribed in such contract. Such contract may provide for the exchange or guaranty of the stock and bonds of either of such corporations by the other and shall be executed by the contracting corporations under the corporate seal of each corporation, and if such contract shall be a lease of any such road and for a longer period than one year, such contract shall not be binding or valid unless approved by the votes of stockholders owning at least two-thirds of the stock of each corporation which is represented and voted upon in person or by proxy at a meeting called separately for that purpose upon a notice stating the time, place and object of the meeting, served at least thirty days previously upon each stockholder personally, or mailed to him at his post-office address, and also published at least once a week, for four weeks successively, in some newspaper printed in the city, town or county where such corporation has its principal office, and there shall be indorsed upon the contract the certificate of the secretaries of the respective corporations under the seals thereof, to the effect that the same has been approved by such votes of the stockholders, and the contract shall be executed in duplicate and filed in the offices where the certificates of incorporation of the contracting corporations are filed. The road of a corporation can not be used under any such contract in a manner inconsistent with the provisions of law applicable to its use by the corporation owning the same at the time of the execution of the contract. Such contract shall be executed by the corporations, parties thereto, and proved and acknowledged in such manner as to entitle the same

to be recorded in the office of the clerk or register of each county through or into which the road so to be used shall run. Nothing in this section shall apply to any lease in existence prior to May first, eighteen hundred and ninety-one. (*Thus amended by chap. 433, Laws 1893.*)

§ 7. STREET SURFACE RAILROADS. LAWS OF 1893, CHAP. 434.

§ 90. *Street surface railroad ; general provisions.*—The provisions of this article shall apply to every corporation which under the provisions thereof, or of any other law, has constructed or shall construct or operate, or has been or shall be organized to construct or operate, a street surface railroad, or any extension or extensions, branch or branches thereof, for public use in the conveyance of persons and property for compensation, upon and along any street, avenue road or highway, in any city, town or village, or in any two or more civil divisions of the state, must comply with the provisions of this article. Any street surface railroad corporation, at any time proposing to extend its road or to construct branches thereof may from time to time make and file in each of the offices in which its certificates of incorporation are filed, a statement of the names and description of the streets, roads, highways and private property, in or upon which it is proposed to construct, maintain or operate such extensions or branches. Upon filing any such statement and upon complying with the conditions set forth in section ninety-one of the railroad law every such corporation shall have the power and privilege to extend, construct, operate and maintain such road extensions or branches on the streets, roads and highways named in such statement, and also upon any private property which it may acquire for such purpose. (*Thus amended by chap. 434, Laws 1893.*)

§ 91. *Consent of property owners and local authorities* — A street surface railroad, or extensions or branches thereof, shall not be built, extended or operated unless the consent in writing, acknowledged or proved as are deeds entitled to be recorded, of the owners of one-half in value of the property bounded on, and also the consent of the local authorities having control of that portion of a street or highway upon which it is proposed to build or operate such railroad shall have been first obtained. In cities the common council, acting subject to the power now possessed by the mayor to veto ordinances ; in villages the board of trustees, and in towns the commissioner or commissioners of highways

shall be the local authorities referred to; if in any city, the exclusive control of any street, avenue or other property, which is to be used or occupied by any such railroad, is vested in any other authority, the consent of such authority shall also be first obtained. The value of the property above specified shall be ascertained and determined by the assessment-roll of the city, village or town in which it is situated, completed last before the local authorities shall have given their consent, except property owned by such city, village or town, or by the state of New York, or the United States of America, the value of which shall be ascertained and determined by making the value thereof to be the same as is shown by such assessment-roll to be the value of the equivalent in size and frontage of the adjacent property on the same street or highway; and the consent of the local authorities shall operate as the consent of such city, village or town as the owners of such property. But where such railroad runs through a street or avenue bounded on one side by a public square or park, the consent of one-half of the property owners on the other side of such street or avenue and opposite to such square or park shall also be first obtained. (*Thus amended by chap. 434, Laws 1893; see, also, chap. 679, Laws 1893.*)

§ 92. *Consent of local authorities; how procured.*—The application for the consent of the local authorities shall be in writing and before acting thereon such authorities shall give public notice thereof and of the time and place when it will first be considered, which notice shall be published daily in any city for at least fourteen days in two of its daily newspapers, if there be two, if not, in one, to be designated by the mayor, and in any village or town for at least fourteen days in a newspaper published therein, if any there shall be, and if none, then daily in two daily newspapers if there be two, if not, one published in the city nearest such village or town. Such consent must be upon the expressed condition that the provisions of this article pertinent thereto shall be complied with, and shall be filed in the office of the clerk of the county in which such railroad is located. Whenever the consent of the common council of a city is applied for, the first consideration, of which notice is hereby required, may be by committee of such common council. Any such notice, publication or consideration heretofore or hereafter given, made or had in substantial conformity with the requirements of this section, is

and shall be sufficient notice, publication and consideration for all the purposes hereof notwithstanding any conflicting provision of any local or special act or charter. (*Thus amended by chap. 434, Laws 1893 ; see, also, chap. 679, Laws 1893, post.*)

§ 93. *Condition upon which consent shall be given ; sale of franchise at public auction.*—The consent of the local authorities in cities containing twelve hundred and fifty thousand inhabitants or more, according to the last federal census or state enumeration, must contain the condition that the right, franchise and privilege of using any street, road, highway, avenue, park or public place shall be sold at public auction to the bidder who will agree to give the city the largest percentage per annum of the gross receipts of such corporation, with a bond or undertaking in such form and around* and with such conditions and sureties as may be required and approved by the comptroller or other chief fiscal office* of the city, for the fulfillment of such agreement and for the commencement and completion of its railroad within the times hereinafter designated according to the plan or plans and on the route or routes fixed for its construction. Whenever such consent shall provide for the sale at public auction of the right to construct and operate a branch or extension of an existing railroad, such consent shall provide that but one fare shall be exacted for passage over such branch or extension and over the line of road which shall have applied therefor ; and further, that if such right shall be purchased by any corporation other than the applicant, that the gross receipts from joint business shall be divided in the proportion that the length of such extension or branch so sold shall bear to the entire length of the road which shall have applied therefor and of such branch or extension, and that if such right shall be purchased by the applicant, the percentage to be paid shall be calculated on such portion of its gross receipts as shall bear the same proportion to the whole value thereof as the length of such extension or branch shall bear to the entire length of its road. The bidder to whom such right, franchise and privilege may be sold must be a duly incorporated railroad corporation of this state, organized to construct, maintain and operate a street railroad in the city for which such consent may be given ; but no such corporation shall be entitled to bid at such sale unless at least five days prior to the day fixed for such

*So in the original.

sale, or five days prior to the day to which such sale shall have been duly adjourned, the corporation shall have filed with the comptroller or other chief fiscal officer of the city, a bond in writing and under seal, with sufficient sureties, to be approved by such comptroller or officer, conditioned that if such right, franchise and privilege shall be sold to such corporation, to pay to the city where such railroad is situated the sum of fifty thousand dollars as liquidated damages and not by way of penalty in the event of the failure of such bidder to fulfill the terms of sale, comply with the provisions of this article pertinent thereto, and complete and operate its railroad according to the plan or plans and upon the route or routes fixed for its construction within the time hereinafter designated for the construction and completion of its railroad, and also conditioned to pay to the corporation first applying for the consent, if it shall not be the successful bidder, the necessary expenses incurred by such corporation prior to the sale pursuant to the requirements and direction of the local authorities, within twenty days after such sale and upon the certificate of the comptroller or other officer conducting the same as to the sum or amount to be paid. Notice of the time and place and terms of sale, and of the route or routes to be sold, and of the conditions upon which the consent of the local authorities to the construction, operation and extension of such street railroad will be given, must be published by such authorities for at least three successive weeks, and in any city having two or more daily newspapers, at least three times a week in two of such papers to be designated by the mayor, and in any city where two daily papers are not published, at least once a week in a newspaper published therein to be designated by the mayor. The comptroller or other chief fiscal officer of the city shall attend and conduct such sale and may twice adjourn the same, but not more than four weeks in all, and shall cancel any bid if the bidder shall not have furnished adequate security entitling such bidder to bid, or shall otherwise fail to comply with the terms and conditions of sale, and shall resell the consent and license in the same manner as hereinbefore provided for the first sale. The bidder who may build and operate such railroad shall at all times keep accurate account books of account of the business and earnings of such railroad, which books shall at all times be subject to the inspection of the local authorities. In the event of the failure or refusal of the corporation operating or using such

railroad to pay the rental or percentage of gross earnings agreed upon, and after notice of not less than sixty days to pay the same, the local authorities interested therein may apply to any court having jurisdiction upon at least twenty days' notice to such corporation, and after it shall have had an opportunity to be heard in its defense, for judgment declaring the consent and right to operate and use such railroad forfeited and authorizing the sale again of the same in the manner hereinbefore prescribed, provided, however, that no such resale of any such consent and right heretofore granted shall be authorized except upon the condition that the same shall be subject to all liens and incumbrances existing on said railroads at the time such forfeiture may have been declared. All consents hereafter given by the local authorities, unless it be otherwise provided in such consent or in some renewal thereof may be forfeited at the expiration of two years thereafter, and every such consent heretofore given to a corporation incorporated under chapter one hundred and forty of the laws of eighteen hundred and fifty, or chapter two hundred and fifty-two of the laws of eighteen hundred and eighty-four, for the purpose of constructing and operating a street surface railroad only, wholly south of the Harlem river, shall be deemed to be in full force and effect and shall continue until June thirtieth, eighteen hundred and ninety-five, when it shall cease, unless prior thereto the required consent of property owners, or the order of the general term in lieu thereof, shall have been the first obtained; and the provisions of this section shall apply to all applications for such consents made under any statute, either before or after the passage of this chapter, and not finally acted upon at the time of its passage. The board of sinking fund commissioners of any city shall have power to compromise or release any existing liability or obligation to the mayor, aldermen and commonalty of such city under the provisions of chapter six hundred and forty-two of the laws of eighteen hundred and eighty-six, or of this chapter whenever, in the opinion of such board, such release or compromise shall be just or equitable, or for the public interest, the reason for any such release or compromise to be stated in the recorded proceedings of such board. Whenever it shall be desired to unite two street surface railroad routes at some point not over one-half mile from such respective lines or routes, and establish by the construction of such connection a new route for public travel, and the corporation or corporations owning or using such railroads shall consent to operate

such connection as a part of a continuous route for one fare, and it shall appear to the local authorities that such connection can not be operated as an independent railroad without inconvenience to the public, but that it is to the public advantage that the same should be operated as a continuous line or route with existing railroads, or whenever for the purpose of connecting with any ferry or railroad depot, it shall be desired to construct an extension or branch not more than one-half mile in length, of any street surface railroad corporation, no sale of such franchise shall be made as provided in this section, but any consent of the local authorities for the construction and operation of such connection, extension or branch shall provide that the corporation or corporations operating such connection, extension or branch shall pay into the treasury of said city annually the percentage provided for extensions or branches in section ninety-five of this chapter, for the purposes, at the times, in the manner and upon the conditions set forth in such section. Nothing herein contained shall be construed as applying to or affecting or modifying the terms of a certain contract bearing date January first, eighteen hundred and ninety-two, entered into by and between the city of Buffalo and the various street surface railroad corporations therein named in such contract. The local authorities may, in their discretion, make their consent to depend upon any further conditions respecting other or further security, or deposit, suitable to secure the construction, completion and operation of the railroad within any time not exceeding the period prescribed in this article and respecting the character, quality or motive power of the road to be completed, and respecting the application of any provision herein contained as to carriage of passengers for single fare and the division of gross receipts and the payment of percentages to the line leased or operated under contract by the applicant for an extension, and also respecting any other matter concerning which, in their judgment, further conditions would be for the public interest. Any and all proceedings heretofore taken in substantial compliance with the provisions of this section, as now amended, are hereby approved, ratified and confirmed. (*Thus amended by chap. 434 Laws 1893.*)

§ 8. THE SAME. LAWS OF 1893, CHAPTER 434.

§ 99. *Within what time road to be built.*—In case any such corporation shall not commence the construction of its road, or of

any extension or branch thereof, within one year after the consent of the local authorities and property owners or the determination of the general term as herein required, shall have been given or renewed, and shall not complete the same within three years after such consents, its rights, privileges and franchises in respect of such railroad extension or branch, as the case may be, may be forfeited. If the performance of any such act, within such time, is prevented by legal proceedings in any court, such court may also extend such time for such period as the court shall deem proper. The time for compliance with this requirement in this or any former act, by a street surface railroad corporation incorporated for the purpose of constructing a street surface railroad only, wholly south of the Harlem river and in cities of over twelve hundred thousand inhabitants and which has heretofore obtained such consents, is hereby extended until June thirtieth, eighteen hundred and ninety-five. (*Thus amended by chap. 434, Laws 1893.*)

§ 9. THE SAME. LAWS OF 1893, CHAPTER 434.

§ 102. *Construction of road in street where other road is built.*—No street surface railroad corporation shall construct, extend or operate its road or tracks in that portion of any street, avenue, road or highway, in which a street surface railroad is or shall be lawfully constructed, except for necessary crossings or, in cities, villages and towns of less than one million two hundred and fifty thousand inhabitants over any bridge without first obtaining the consent of the corporation owning and maintaining the same, except that any street surface railroad company may use the tracks of another street surface railroad company for a distance not exceeding one thousand feet, and in cities, villages and towns of less than one million two hundred and fifty thousand inhabitants shall have the right to lay its tracks upon, and run over and use any bridge used wholly or in part as a foot bridge, whenever the court upon an application for commissioners shall be satisfied that such use is actually necessary to connect main portions of a line to be constructed as an independent railroad, or to connect said railroad with a ferry, or with another existing railroad, and that the public convenience requires the same, in which event the right to such use shall only be given for a compensation to an extent and in manner to be ascertained and determined by commissioners to be appointed by the courts as is provided in the condemnation law, or by the board of railroad

commissioners in cases where the corporations interested shall unite in a request for such board to act. Such commissioners in determining the compensation to be paid for the use by one corporation of the tracks of another shall consider and allow for the use of tracks and for all injury and damage to the corporation whose tracks may be so used. Any street surface railroad corporation may, in pursuance of an unanimous vote of the stockholders voting at a special meeting called for that purpose, by notice in writing, signed by a majority of the directors of such corporation, stating the time, place and object of the meeting, and serving upon each stockholder appearing as such upon the books of the corporation, personally or by mail, at his last known post-office address, at least sixty days prior to such meeting, guarantee the bonds of any other street surface railroad corporation whose road is wholly or partly in the same city or town or adjacent cities or towns. (*Thus amended by chap. 427, Laws 1893.*)

§ 10. BRIDGE COMPANIES MAY LAY TRACKS. LAWS OF 1893,
CHAPTER 225.

§ 1. *Railways may be operated over bridges.*—Any company incorporated for the purpose of constructing and maintaining a bridge or bridges over any river, bay, arm of the sea or other body of water, connecting any city in the state of New York, containing more than one million inhabitants, with any other city in said state, is hereby empowered to lay tracks and operate a railway upon said bridge or bridges.

§ 11. CERTIFICATES OF INCORPORATION. LAWS OF 1893,
CHAPTER 238.

§ 1. *Filing of amended certificate.*—Where it does not appear by the affidavit indorsed on or annexed to any certificate of incorporation filed under the railroad law, that the amount of capital stock required by the provisions of said law to be paid in good faith and in cash to the directors named in such certificate has been so paid, and where such payment has been made prior to the passage of this act, an affidavit of at least three of the directors named in said certificate, stating that the amount of capital stock required by said railroad law to be paid in good faith and in cash to the directors named in the certificate has been so paid, may be filed in the office of the secretary of state, which affidavit shall be annexed to said certificate, and upon

such filing, said certificate shall for all purposes have the same force and effect as if said affidavit had been annexed thereto when said certificate was filed.

§ 12. GRADE CROSSINGS. LAWS OF 1893, CHAPTER 239.

§ 1. *Proceedings in case of controversy ; appointment of commissioners.*—Whenever the railroad or route of any street surface railroad corporation shall intersect and cross, or shall cross the tracks and roadbed of any railroad operated by locomotive, steam or other power, which are laid in, across or upon the surface of any street, avenue, road or highway in any city, town or village of the state, having less than five hundred thousand inhabitants, and such street surface railroad corporation having been unable to agree with the corporation owning the tracks and roadbed so intersected or to be intersected and crossed, as to the line or lines, grade or grades, points or manner of such intersection and crossing, or upon the compensation to be made therefor, shall have applied to the court by petition to appoint commissioners to determine the same, the court shall, upon application made by such street surface railroad corporation, at, or after, the time of the appointment of such commissioners, or if an answer to the petition of such street surface railroad corporation has been interposed, at any time thereafter, direct that such street surface railroad corporation be permitted to lay its tracks across and to intersect upon the surface of the street, avenue, road or highway, the tracks and roadbed of such railroad operated by locomotive, steam or other power, provided, such street surface railroad corporation shall at the time of obtaining such order make and file with the clerk of said court, its bond or undertaking in writing, in an amount and with surety or sureties to be approved by the court, conditioned for the full and faithful performance by such street surface railroad corporation of any and all conditions and requirements which may be imposed by said commissioners and be affirmed by the court, in determining the line or lines, grade or grades, points or manner of such intersection and crossing, and as to the amount of compensation to be paid therefor, and also conditioned to conform such crossing and intersection made by virtue of such order of the court to the requirements made by said commissioners as affirmed by the court.

§ 2. *Crossing not allowed in certain cases.* — No street surface railroad shall be allowed to lay its tracks at grade across the tracks or roadbed of any railroad operated by locomotive steam power at any point where there are three or more tracks of the steam road proposed to be crossed, which tracks have been constructed and in operation at least two years, unless the written consent of the state railroad commissioners be first obtained for such crossing at grade. But this section shall not affect the operation of section one of this act in any suit or proceeding now pending nor any renewals of said pending suit or proceeding brought for any cause.

§ 13. SAFETY APPLIANCES. LAWS OF 1893, CHAPTER 543.

SECTION 1. That from and after the first day of January, eighteen hundred and ninety-five, it shall be unlawful for any railroad company to use within the state on its line or lines any locomotive engine not equipped with a power driving wheel brake and appliances for operating the train brake system.

§ 2. *Freight cars to be equipped with air-brakes ; "coal jimmies," when to be so equipped. Locomotives to be equipped with driving wheel brakes, etc.* — That from and after the passage of this act, in addition to all freight cars now so equipped there shall be equipped each year with continuous power or air brakes by every company operating a line or lines of railroad within the state, at least ten per centum of all freight cars owned or operated by such companies and used within the state except certain cars known and designated as "coal jimmies," and that on and after the first day of January eighteen hundred and ninety-eight, the use of said "coal jimmies" in any form shall be unlawful within the state under a penalty of one hundred dollars for each offense, said penalty to be recovered in an action to be brought by the attorney-general in the name of the people and in the judicial district where the principal office of the company within the state is located.

§ 3. *When other cars not to be hauled.* — That on and after the first day of January, nineteen hundred and three, it shall be unlawful for any railroad or other company to haul or permit to be hauled or used on its line or lines within the state, any freight car not equipped with continuous power or air brakes operated from the engine.

§ 4. *Report of cars to be filed.* — That within sixty days from the passage of this act every railroad or other company operating a line of railroad within the state shall file with the board of railroad commissioners at its office in Albany a verified statement of the total number of freight cars owned or operated by it, the number of such cars equipped with such continuous power or air brakes and the number unequipped, and shall thereafter annually and in the month of January, for the ensuing ten years, file with said board a verified report of the number of cars so equipped in each year, and the number of cars, if any, remaining unequipped.

§ 5. *Penalty for neglect.* — That on and after January first, nineteen hundred and three, any railroad or other company using or permitting to be used on its line or lines any freight car not equipped with such continuous power or air brake, operating from the locomotive, shall be liable to a penalty of one hundred dollars for each and every violation, to be recovered in any action to be brought by the attorney-general in the name of the people in the judicial district wherein the principal office of the company within the state is located, and it shall be the duty of the board of railroad commissioners of the state to notify the attorney-general of all such violations coming to its notice.

§ 6. *Railroad commissioners may make exemptions.* — That the board of railroad commissioners may, from time to time, after full hearing given and for good cause shown, exempt any company from the provisions of this act, as to the equipment of ten per centum of its cars in any particular year or years, and may extend the time within which any company shall comply with the requirements of this act, not exceeding, however, five years from the first day of January, eighteen hundred and ninety-eight.

§ 7. *Repeal.* All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

§ 14. AUTOMATIC COUPLERS. LAWS OF 1893, CHAP. 544.

§ 1. *New freight cars; how to be equipped.* — That from and after the passage of this act, every new freight car which is to be used in this state shall be equipped with couplers of the master car builders' type, which can be coupled automatically by impact, and which may, except in cases of accident, be uncoupled without the necessity of a person going between the cars.

§ 2. *Certain percentage of cars to be equipped annually; "coal jimmies."*—That from and after the passage of this act, in addition to such new freight cars, there shall be equipped each year with such couplers, by every company operating a line or lines of railroad within the state, at least twenty per centum of all freight cars owned or operated by such companies, and used within the state, which are not now so equipped, except certain cars known and designated as "coal jimmies," and that on and after the first day of January, eighteen hundred and ninety-eight, the use of said "coal jimmies," in any form shall be unlawful within the state, under penalty of one hundred dollars for each offense, said penalty to be recovered in an action to be brought by the attorney-general, in the name of the people, and in the judicial district where the principal office of the company within the state is located.

§ 3. *Unlawful to haul cars not properly equipped.*—That on and after the first day of January, eighteen hundred and ninety-eight, it shall be unlawful for any railroad or other company to haul, or permit to be hauled or used, on its line or lines within the state, any freight car not equipped with couplers of the master car builders' type, and coupling automatically by impact, and which can be uncoupled, except in cases of accident, without the necessity of men going between the ends of the cars.

§ 4. *Report of cars to be filed.*—That within sixty days from the passage of this act, every railroad or other company operating a line of railroad within the state, shall file with the board of railroad commissioners, at its office in Albany, a verified statement of the total number of freight cars owned or operated by it, the number of such cars equipped with the automatic couplers, and the number unequipped; and shall thereafter annually, and in the month of January, for the ensuing five years, file with said board a verified report of the number of cars so equipped in each year, and the number of cars, if any, remaining unequipped.

§ 5. *Penalty for neglect.*—That on and after January first, eighteen hundred and ninety-eight, any railroad or other company using, or permitting to be used, on its line or lines, any freight car not equipped with couplers as provided for in this act, shall be liable to a penalty of one hundred dollars for each and every violation, to be recovered in an action to be brought by the

attorney-general, in the name of the people, and in the judicial district wherein the principal office of the company within the state is located; and it shall be the duty of the board of railroad commissioners of the state to notify the attorney-general of all such violations coming to its notice.

§ 6. *Railroad commissioners may make exemptions.*—That the board of railroad commissioners may, from time to time, after full hearing given and for good cause shown, exempt any company from the provisions of this act, as to the equipment of twenty per cent of its cars in any particular year or years, and may extend the time within which any company shall comply with the requirements of this act, not exceeding, however, five years from the first day of January, eighteen hundred and ninety-eight.

§ 7. *Repeal.*—All acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

§ 15. RELIEF OF SURFACE RAILROAD COMPANIES, LAWS OF 1893, CHAPTER 679.

§ 1. *May operate extensions and branches; certificate to be filed.*—Any street surface railroad corporation which shall have heretofore constructed and is now operating any extension or branch of its railroad along any streets or highways or portion thereof in a city having less than fifty thousand inhabitants, or in any town adjoining such city, and which shall heretofore have obtained consent of the owners of one-half in value of the property bounded on, and the consents also of the local authorities having control of that portion of the streets, roads or highways upon which such extension or branch is constructed and is being operated to the construction and operation of the same, is hereby authorized to operate and maintain any such branch or extension, upon filing in the office of the secretary of state a certificate signed by its board of directors, which certificate shall contain a statement of the names of the cities, towns, villages and counties, and the names or description of the streets, avenues and highways in which such extensions or branches have been constructed, the places from and to which the same have been constructed and are to be maintained and operated and the length thereof as near as may be; thereupon said extensions and branches shall be deemed and considered a part of the lines of said railway from the date of

the filing thereof, and all corporate action relating to the construction, maintenance and operation of such extensions or branches, or creating liens upon the same by said corporation are hereby validated and confirmed.

§ 2. *Reservation*.—Nothing in this act contained shall affect or impair any vested right or any pending litigation, nor shall any corporation which shall avail itself of the provisions of this act be deemed thereby to have waived any rights which it theretofore had to maintain and operate any branch or extension named in any certificate filed by it hereunder.

§ 16. WEEKLY PAYMENTS OF WAGES. LAWS OF 1893, CHAPTER 717. AMENDING LAWS OF 1890, CHAPTER 388.

§ 1. *Wages to be paid weekly; obligation extends to successors*.—Every manufacturing, mining, quarrying, lumbering, mercantile, railroad, other than a steam surface railroad, steamboat, telegraph, telephone, and municipal corporation or joint stock company, and every incorporated or joint-stock express or water company, shall pay weekly to each of its employes the wages earned by such employe, to within six days of the date of such payment, unless any such employe shall be absent from his regular place of labor at the usual time of payment, in which case payment shall be made at any reasonable time thereafter upon demand. Whenever any such joint-stock company or corporation shall contract or lease its plant, works or business, to an agent or other person to conduct the same, and to turn over the product or receipts thereof to such joint-stock company or corporation, it shall be and it is hereby made a condition of such contract or lease that the agent or person so contracting or leasing the plant, works or business of such corporation or joint-stock company shall pay in cash weekly the wages earned by persons engaged by him to work in and about such plant, works or business, the same as if such persons were employed directly by such corporation or joint-stock company.

§ 2. *Penalty for neglect; duty of factory inspectors; assignment of wages*.—Any joint-stock company or corporation violating any of the provisions of this act, shall be liable to a penalty not exceeding fifty dollars and not less than ten dollars for each violation, to be paid to the people of the state, and which may be recovered in a civil action; provided an action for such violation is commenced within thirty days from the date thereof.

The factory inspectors of this state, their assistants or deputies, may bring an action in the name of the people of the state, as plaintiffs, against any joint-stock company or corporation which neglects to comply with the provisions of this act for a period of two weeks, after having been notified in writing by such inspectors, assistants or deputies, that such action will be brought. On the trial of such action such joint-stock company or corporation, shall not be allowed to set up any defense for a failure to pay weekly any employe engaged in its business, the wages earned by such employe to within six days of the date of such payment other than a valid assignment of such wages or a valid set off against the same, or the absence of such employe from his regular place of labor at the time of payment, or an actual tender to such employe at the time of payment, of the wages so earned by him, or a breach of contract by such employe, or a denial of the employment. No assignment of future wages, payable weekly, under the provisions of this act shall be valid if made to the corporation or joint-stock company from which such wages are to become due, or to any person on behalf of such joint-stock company or corporation, or if made or procured to be made to any person for the purpose of relieving such joint-stock company or corporation from the obligation to pay weekly under the provisions of this act. Charges for groceries, provisions or clothing shall not be made a valid off set for wages, nor shall any such corporation or joint-stock company require as a condition of employment any agreement from any employe to accept wages at other periods than as provided in section one of this act. Any person, acting as the agent or lessee of a corporation or joint-stock company, and operating its plant, works or business and disposing of the products thereof chiefly or solely to such corporation or joint-stock company, who shall violate the provisions of this act, shall be guilty of a misdemeanor, and on conviction thereof shall be fined not less than ten dollars nor more than fifty dollars.

§ 3. *Application of act.*—The provisions of section two hundred and sixty-three and three hundred and eighty-four of the code of civil procedure shall apply to and govern any proceedings brought to enforce the provisions of this act, as against joint-stock companies or corporations, and it is hereby made the duty of the attorney-general of this state to appear in behalf of such proceedings brought hereunder by the factory inspectors of this state, their assistants or deputies.

§ 17. HOURS OF SERVICE ON RAILROADS. LAWS OF 1892,
CHAP. 711.

SECTION 1. *Limit of working hours.*—No person, persons or corporation operating a line of railroad of thirty miles in length or over, in whole or in part, within this state, shall permit or require any conductor, engineer, fireman or any trainman who has worked in any capacity for twenty-four hours, to again go on duty or perform any kind of work until he has had at least eight hours' rest.

§ 2. *The same; exceptions.*—Ten hours' labor performed within twelve consecutive hours shall constitute a day's labor in the operation of all steam surface and elevated railroads owned and operated within this state, provided that this provision shall not affect the mileage system now in operation, or that may hereafter be placed in operation, or trips of regular scheduled trains when completed within a less number of hours, and it is further provided that the provisions of this act shall not apply to extra hours of labor performed by any conductor, engineer, fireman or trainman in cases of unavoidable accident or delay caused by such accident.

§ 3. *Additional compensation.*—For every hour in excess of said ten hours' labor that any conductor, engineer, fireman or any trainman of any railroad company or corporation, owned or operated within this state, who works under the direction of a superior, or at the request of such company or corporation, shall be required or permitted to work, he shall receive comparative compensation for said extra service in addition to his daily compensation.

§ 4. *Penalty for neglect.*—Any railroad company or corporation, or any officer, agent or employe, of any such company or corporation, violating or permitting the violation of any of the provisions of this act, shall be guilty of a misdemeanor, and on conviction shall be punished by a fine of five hundred dollars for each offense.

§ 18. PROTECTION OF GAME. LAWS OF 1892, CHAPTER 488.

§ 46. *Transportation.*—Deer or venison killed in this state shall not be transported to any point within the state from or through any of the counties thereof or possessed for that purpose, except as follows: One carcass or a part thereof may be transported from the county where killed, when accom-

panied by the owner. The possession of deer or venison by common carriers, unaccompanied by the owner, is a violation of this section. This section does not apply to the head and feet or skin of deer severed from the body.

§ 76. *Woodcock and grouse, when not to be transported.*

—Woodcock, ruffed grouse, commonly known as partridge, or any member of the grouse family, or quail killed in this state, shall not be transported to any point within this state, from any of the counties thereof, or possessed for that purpose, except that such birds may be transported from the county where killed, when accompanied by the owner thereof. Possession of the birds named by a common carrier, unaccompanied by the owner, is a violation of this section, unless it be proved by such common carrier that the birds were killed out of the state.

§ 109. *Certain fish not to be transported.*—Trout of any kind, salmon trout or land-locked salmon, caught in any of the inland waters of this state shall not be transported to any point within the state from any of the counties thereof, or possessed for that purpose, except when accompanied by the owner. Possession thereof by a common carrier, unaccompanied by the owner is a violation of this section.

See, also, chap. 62, Laws of 1893.

For penalties, see §§ 51, 82 and 120.

§ 19. PROTECTION OF ADIRONDACK PARK. LAWS OF 1893,
CHAPTER 332.

§ 107. *Duties of railroad companies.*—Every railroad company whose road passes through waste or forest lands liable to be overrun by fires within the state, shall twice in each year cut and remove from its right of way all grass, brush or other inflammable materials, but under proper care and at proper times when fire, if set, can be kept under control. All locomotives which run through forest lands shall be provided with approved and sufficient arrangements for preventing the escape of fire from their furnaces or ashpans and with netting of steel or iron wire upon their smoke stacks to prevent the escape of sparks of fire and every engineer and fireman employed upon a locomotive shall see that the appliances to prevent the escape of fire are in use and applied as far as it can be reasonably and practically done. No railroad company shall permit its employes to deposit fire coals or ashes upon their track in the immediate vicinity of wood lands,

or lands liable to be overrun by fires, and where any engineers, conductors or trainmen discover that fences or other material or substances along the right of way upon wood lands adjacent to the railroad are burning, or in danger from fire, they shall report the same at their next stopping place, and the person in charge of such station shall take prompt measures to extinguish such fires and shall immediately notify the nearest firewarden or forester. In seasons of drought and especially during the first dry time in the spring after the snows have gone and before vegetation has revived, railroad companies shall employ a sufficient number of trackmen for the prompt extinguishment of fires; and where a forest fire is raging near the line of their road, they shall concentrate such help and adopt such measures as shall most effectually arrest its progress. If any railroad company or any of its employes violate any provision of this section the company shall forfeit to the people of the state the sum of one hundred dollars for every such violation.

§ 20. SALE OF LIQUORS BY COMMON CARRIERS. LAWS 1892,
CHAPTER 401.

§ 30. *Licenses by comptroller to common carriers.*—The comptroller is hereby authorized to grant licenses to persons, associations or corporations engaged in the transportation of passengers by cars, steamboats or vessels, within the limits of this state, permitting them to sell strong or spirituous liquors, wines, ale or beer, to such passengers while in transit, without license by any board of excise. Every license so granted by the comptroller shall expire at the end of one year from the date of its issuance. It shall be granted upon such terms, conditions and restrictions as such comptroller may deem proper, and upon the payment of such sum as he shall fix, not less than thirty dollars for each and every car, boat or vessel in which such sales are to be made. The moneys received by him for licenses shall be paid into the treasury of the state. Any person or corporation who shall sell, or permit to be sold, or offer or expose for sale any strong or spirituous liquors, wines, ale or beer, upon any car, steamboat or vessel, without having first obtained a license therefor as herein provided, shall forfeit the sum of fifty dollars for each offense, to be sued for and recovered in an action in the name of the people, brought by the attorney-general; and the person so offending shall be guilty of a misdemeanor.

§ 21. EMPLOYMENT OF INTEMPERATE PERSONS. LAWS OF 1892.
CHAPTER 401.

§ 39. *Employment of persons addicted to intoxication by common carriers.*—Any person, association or corporation engaged in the business of conveying passengers and property for hire who shall employ in the conduct of such business any person who habitually indulges in the intemperate use of intoxicating drinks, after notice that such person has been intoxicated while in the active service of such person, association or corporation as an engineer, fireman, conductor, switchtender, commander, pilot, mate, foreman or in other like capacity, so that by his neglect of duty the safety and security of the life, person or property so conveyed might be imperilled, shall be guilty of a misdemeanor.

§ 22. STOCKHOLDERS MEETING; RIGHTS OF MUNICIPAL CORPORATIONS. LAWS OF 1893, CHARTER 546.

§ 75. *Stocks of municipal corporations, how represented.*—At any meeting of the stockholders of any railroad corporation to consider any agreement or proposition to consolidate or lease, the commissioners or other officers of any municipal corporation holding or having charge of any of the capital stock of such railroad corporation shall represent such municipal corporation, and may act and vote in person or by proxy on all matters relating to such consolidation or lease in the same manner as individual stockholders. (*Thus amended by chap. 546, Laws 1893.*)

§ 23. PENAL CODE.

§ 443a. *Lights upon swing bridges.*—A corporation, company or individual, owning, maintaining or operating a swing bridge across the Hudson river, who during the navigation season between sundown and sunrise, neglects to keep and maintain upon every such bridge the lights required by law, is guilty of a misdemeanor. (*This section added by chap. 692, Laws 1893.*)

§ 24. PUBLIC HEALTH. LAWS OF 1893, CHAPTER 661.

§ 23. *Burial and Burial Permits.*—Every such local board shall prescribe sanitary regulations for the burial and removal of corpses, and shall designate the persons who shall grant permits for such burial, and permits for the transportation of any corpse which is to be carried for burial beyond the county where the

death occurred. Every undertaker, sexton or other person having charge of any corpse, shall procure a certificate of the death and the probable cause, duly certified by the physician in attendance upon the deceased during his last illness, or by the coroner where an inquisition is required by law, and if no physician was in attendance and no inquest has been held or required by law, an affidavit stating the circumstances, time and cause of death, and sworn to by some credible person known to the officer granting the permit, and there shall be no burial or removal of a corpse until such certificate or affidavit has been presented to the local board or to the person designated by it, and thereupon a permit for such burial or removal has been obtained. When application is made for a permit to transport a corpse over any railroad or upon any passenger steamboat within this state, the board of health, or the officers to whom such application is made, shall require such corpse to be enclosed in a hermetically sealed casket of metal or other indestructible material, if the cause of death shall have been from a contagious or infectious disease.

INDEX.

[SEE INDEX TO INTER-STATE COMMERCE ACT AT END OF CHAPTER X.]

(References are to Pages.)

ABANDONMENT —

- not permitted by change of route, 12.
- by street surface railroad, 60.
 - proceedings to effect, 60.
- by elevated roads, of part of route, 208.
- proceedings to effect, 208, 209.
 - notice to stockholders, 208.
 - approval of stockholders, 209.
 - approval of railroad commissioners, 209.
 - certificate thereof, how filed, 209.
- when not permitted, in Kings county, 45.
- of franchises. *Notes*, 105.

ACCIDENTS — See NEGLIGENCE.

- investigation of accidents, 78h.
- corporations to notify railroad commissioners of, 78h.

ACCOUNTS —

- punishment for fraud on, etc., 377.

ACTIONS —

- against a corporation on a note, etc., 320.
- against directors, etc., for misconduct, 322.
- by whom to be brought, 322.
- construction of article, 323.
- by judgment creditor for sequestration, etc., 323.
- action to dissolve a corporation, 324.
- by whom to be brought, 324.
- making stockholders parties, 326.
- proceedings in actions against corporations or stockholders 327.
- action to annul a corporation, 328.
 - by attorney-general, when legislature directs, 328.

ACTIONS — Continued.

- action by attorney-general, by leave of court, 328.
 - leave, when and how granted, 329.
- action triable by jury, 329.
- judgment, 329.
- injunction may issue, 329.
- copy judgment roll to be filed and published, 330.
- when must be brought by attorney-general, 331.
- by and against officers, etc. ; by executors, etc., 341.
- on bank notes, etc. ; no limitation of action on, 347.
- against directors, etc., of banks, 347.
- to compel determination of a claim to real property, 349.
 - this article applies to corporations or receivers, 349.
- against usurper of office, or franchise, 350.
 - attorney-general may maintain action, 350.
 - action triable by jury, 350.
 - assumption of office by person entitled, 350.
 - proceedings to obtain books and papers, 351.
 - damages, how recovered, 351.
 - one action against several persons, 351.
 - when injunction may be granted, 351.
 - final judgment in, for usurping office, etc., 352.
 - costs, how collected against usurpers of franchise, 352.
- to be brought in name of people, when, 352.
- receivers, leave to bring against, 307.
- by receivers for arrears of stock, 310.
- limitation of, to enforce stockholders liability, 138n, 169.
 - to enforce liability against corporation, 170.
- by directors as trustees in case of dissolution, 120.
- in relation to stock. *Notes.* 144.
- to establish liability of stockholder. *Notes.* 144.
- against corporations. *Notes.* 147.
- against stockholders. *Notes.* 90.

ADIRONDACK PARK —

- protection of, 469.
- duties of railroad companies, 469.
- grass, etc., to be cut, 469.
- locomotives to be provided with spark arresters, 469.
- coals or ashes not to be deposited near woodlands, 469.
- employees of railroads to report fires, 470.
- men to be employed to extinguish fires, 470.

ADIRONDACK PARK — Continued.

penalty for neglect, 470.

ALTERATION OF BUSINESS —

when may be accomplished, 138e.

filing amended certificate, 138e.

approval of stockholders, 138e.

AMENDMENT OF CHARTER — See **CHARTER**.

provisions regarding, 110.

filing amended certificate, 111.

ANIMALS —

railroads may convey persons and property by, 5.

transporting over twenty-four hours, 397.

in a cruel manner, 398.

keeping vicious animal, 398.

overdriving; failure to feed, 398.

defined; "torture"; "cruelty," 398.

ANNUAL REPORT —

must be made by all railroads, 34.

date of filing may be changed, 34.

penalty for refusal, or for false report, 34.

APPLIANCES —

certain safety prescribed, 30.

railroad commissioners may approve certain, 31.

automatic couplers to be placed on cars, 463-464.

air-brakes on cars, 462-463.

engines, driving-wheel brakes on, 462.

"coal jimmies," how to be equipped, 462, 464.

guard-posts, failure to provide, 364.

automatic couplers failure to provide, 364.

ARSON —

arson in first degree, 395.

second degree, 395.

third degree, 395.

"night time" defined, 396.

"building" defined, 396.

burning certain property, how punished, 396.

ASSESSMENT — See **TAXATION** —

of property of consolidated corporation, how made, 40.

ATTORNEY-GENERAL —

receivers to report to, 297.

notice of report, by receivers to, 300.

ATTORNEY-GENERAL — Continued.

- motion by, to remove receivers, 298, 300.
- receivers to serve papers on, 301.
- receivers appointed on application of, 302.
- duty of in relation to receivers, 302.
- to file petition on default of payment of taxes, 296i.
- when to bring action to dissolve corporation, 328.
- when may maintain action against usurper of office, 350.

ATTACHMENT—

- grounds of issuing against corporation, 343.
- of unpaid subscription to foreign corporation, 343.
- of interest in corporations, 343.
- certificate of defendant's interest to be furnished, 344.
- person refusing certificate may be examined, 344.
- judgment, when enforced only against attached property, 344.

AUTOMATIC COUPLERS—

- new freight cars, how to be equipped, 463.
- certain percentage of cars to be equipped annually, 464.
- unlawful to haul cars not properly equipped, 464.
- report of cars to be filed, 464.
- penalty for neglect, 464.
- railroad commissioners may make exemptions, 465.
- repeal of inconsistent acts, 465.
- to be placed on every new freight car, 30.
- automatic air-brakes, 30.
- requirements regarding, 364.

BAGGAGE — See, also, **FREIGHT** —

- all baggage must be checked, 26.
- penalties for refusing check, 26, 28.
- penalties for injury to, 27.
- baggage must be delivered promptly, 26.
- unclaimed freight and baggage may be sold, 27.
- notice thereof, what to contain, 27.
- perishable material may be sold forthwith, 27.
- disposition of the proceeds thereof, 27, 28.
- checks for connecting steamboats, 28.
- penalty, 28.
- transfer of baggage from steamboat to train, 28.
- description of unclaimed trunks and baggage, 262.
- to be entered in a book, 262.
- description of, to be made and published, 262.

BAGGAGE — See, also, **FREIGHT** — Continued.

- proceedings if property not claimed, 262
- inventory and sale of, 262, 263.
- expenses a lien on property, 263.
- penalty for neglect, 263.

BANKS—

- prohibition of banking powers to corporations, except, etc., 115.

BILLS—

- of foreign banks, unlawful discount of, 369.

BILLS OF LADING—

- fictitious issue of, receipts and vouchers, 374.
- issues in good faith excepted, 375.
- duplicate must be issued, 375.
- bill of lading or receipt issued by warehouse-man, must be cancelled on re-delivery of property, 375.
- qualification of preceding section, 375.

BILL OF SALE—

- record of vessels, 350.

BONDS—

- conversion of bonds into stock in certain cases where tracks are relaid, 235.
- how made non-negotiable by indorsement, 235.
- the same; indorsement, 236.
- may be transferred by indorsement in blank, 236.
- increase of floating and bonded indebtedness where change of gauge is made, 237.
- acquisition of in other corporations, 138f.
- guarantee of bonds of other corporation, 138g.
- consideration of issue of, 138g.
- to be issued only for market value, 138g.
- railroads may issue to secure loans, 5.
- not to be issued as consideration for consolidation, 38, 39.
- holders not to be compelled to accept before due, 39.
- forgery of, 379.
- fraudulent issue of, 366, 367.
- over-issue, 370.
- by rapid transit railroads, 173.

BOOKS—

- to be kept by stock corporations, 138c.
- stock books, 138c.

BOOKS — Continued.

- to be open for inspection, 138c.
- entry of transfers, 138c.
- stock book presumptive evidence, 138c.
- failure to keep or allow inspection, 138c, 372.
- refusal of agents to make entry in, 138c, 371.
- penalty for neglect, 138c.
- of corporation, how produced, 345.
- of foreign corporation, when evidence, 346.
- when copy thereof is evidence, 346.
- forgery of entries in, 379, 380, 381, 382.
- frauds in keeping accounts in, 368.
- refusal to make entry in, 368.
- exhibition of by transfer agent of foreign corporation, 138m.
- penalty for refusal, 138m.

BRAKES—See **AUTOMATIC AIR BRAKES**.

BRIDGES—

- lights on, across Hudson river, 247.
- penalty for neglect, 247.
- not to be erected over navigable streams, 9.
- warning signals to be placed at, 30.
- guard-posts on, 30.
 - penalty, 31.
- use of by street railroads, 459.
- street railroads, extension over, 59--60.
 - compensation therefor, 60.
- right to cross substituted bridge, 64.
- liens upon, and trestle work, 277--278.
- lights on swing, over Hudson river, 471.
- when elevated road may be constructed in lieu of approaches to, 272.

BRIDGE COMPANY—

- consolidation of with railroad company, 36--37
- when may lay tracks, 460.

BROOKLYN—

- elevated or steam railroads not to be in Washington street, except, etc., 211.
- use of steam and surface railroads upon Atlantic avenue, when forbidden, 221.
- charter or franchise not revived in, 452.

BUFFALO—

- exceptions relating to street railroads in, 67, 458.
- no change of grade in, 11.
- rates and additional rates for children on street railroads in, 218.
- street railroads forbidden in parks of, 219.
- rates of fare on street railroads in, 219.
- rates upon transfer for children, exceptions, 220.

BUILDINGS—

- definition of in Penal Code, 397.
- railroads may erect, and stations, 4.

BUOY—

- injury to, 391.

BURGLARY--

- in third degree, 396.
- "break" defined, 396.
- "night time" defined, 397.
- "enter" defined, 397.
- "dwelling-house" defined, 397.
- "building" defined, 397.

BY-LAWS—

- corporations may make, 112.
- not valid until published, 112.
- fixing amount of stock represented to constitute quorum, 112.
- fixing time for election of directors, 137-138.
- effect of failure to provide for annual meeting by, 138-138 a.
- may provide for forfeiture of stock for non-payment of calls 166.
- amendments of, 166.
- when directors may make, 120.
- of rapid transit corporations, 154.
- Notes upon, 148.

CABLE RAILROADS—

- street railroads may adopt system, 58.
- in foreign countries, with consent of patentees, 15.
- fares on, 23.
- change to, 58.

CALL—

- stock not to be transferred until all paid, 138 f.
- when necessary, Notes, 143.

CANALS—

- railroads may intersect, 4,
- change of grade at crossing of, 12.
- railroads not to be constructed along, 13.
- maps to be filed when railroads constructed across, 252.
- power of commissioners, 252.
- railroads may be constructed in lieu of, 253.

CAPITAL STOCK—

- subscribers to certificate of incorporation, 3.
- payments upon before organization, 3.
- affidavit of payments, 3.
- amount to be stated in certificate of incorporation, 2.
- number of shares into which divided ; character of, 2.
- conversion of bonds into, 133.
- increase of, on conversion of bonds, 134.
- issue of, upon reorganization, 135-136.
- not to be withdrawn or divided as dividends, 138 a, 367.
- dissent to be entered in minutes, 138 a.
 - penalty, 138 a.
 - exception in case of dissolution, 138 a.
- indebtedness not to exceed, 138 a.
- transfer of, where holder indebted to corporation, 138 b.
- stock book, 138 c.
 - to be open to stockholders etc., 138 c.
 - transfers of, 138 c.
 - when transfer valid. 138 c.
- issue and transfers of, 138 f.
- certificate of, how executed, 138 f.
- may be acquired in other corporations, 138 f.
- president may be director of company whose stock is so held, 138 f.
- corporation stockholder has same rights as individual, 138 f.
- subscription to, 138 g.
 - ten per cent payable in cash, 138 g.
- consideration of issue of, 138 g.
 - not to be issued below par value, 138, g.
- time of payment of, 138 g.
- forfeiture upon default of payment, 138 g.
- reissue after forfeiture, 138 h,
- if not sold, to be cancelled, 138 h.
- reduction of, by cancellation, 138 h.

CAPITAL STOCK — Continued.

- if reduced below requirements of law, to be increased, 138 h.
- payment to receiver when appointed, 138 h.
- increase or reduction of, 138 h.
 - limitations upon power to, 138 h.
 - increase of, on conversion of bonds, 134.
 - liabilities of holders after increase, 138 h.
 - if reduced not to exceed debts, 138 h.
 - limitation on insurance company, 138 i.
 - owner not relieved of liability by reduction, 138 h.
 - notice of meeting to increase or reduce, 138 h.
 - conduct of such meeting, 138 i.
 - certificate of increase or reduction, 138 i.
 - execution and filing of certificate, 138 i.
 - approval of comptroller, as to sufficiency of, 138 i.
 - approval of railroad commissioners, 138 i.
 - or superintendent of banks, 138 i.
 - or superintendent of insurance, 138 i.
 - increase or reduction, when effected, 138 i.
 - proceedings to be entered in minutes, 138 i.
 - surplus after reduction to be returned to stockholders, 138 i.
 - not to be increased by exchange of preferred for common, 138 j.
 - fraudulent increase, reduction, or reissue of, 366-367.
 - by rapid transit companies, 169,
 - stockholders to approve, 169.
 - statement to be approved, attested, and filed, 169.
 - reduction of when railroad extended to another state, 12.
 - reduction when two roads have same location, 12-13.
 - see p. 448.
- tax required on increase, 295.
 - preferred and common, 136.
 - on reorganization, 136.
 - certificate of organization may so provide, 138 j.
 - by consent of stockholders 138 j.
 - or of directors, 138 j.
 - total amount of, not to be increased by such exchange, 138 j.
 - exchange for common stock, 138 j.
 - prohibited transfers of to officers or stockholders, 138 j.

CAPITAL STOCK — Continued.

lost certificate, 138 k.

application to court for issue of new one, 138 k.

statement in petition, 138 k-138 l.

service of, 138 l.

order of court upon such application, 138 l.

bond of indemnity, 138 l.

not to be divided as dividends, 367.

nor withdrawn, 367.

not to be paid for by discount of note, etc., 367.

directors not to use funds in purchasing, 382.

not to be received in payment of debts, 368.

nor exchanged for notes, bonds, etc., 368.

overissue of by directors, 371.

directors not to be interested in sale of, unless owners of same, 371.

exchange or guaranty of, on lease of road, 42.

merger of on consolidation, 36.

on consolidation, not to exceed aggregate of original companies, 37-38.

debts due or belonging to new corporation, 39.

leasees of railroad may acquire stock therein, 43.

certificates of, may be issued after foreclosure, 44.

fraudulent issue, sale, etc., 382, 371, 366.

over issue of, 371, 366.

forgery of, 380.

reduction of capital stock, 448.

notice of meeting, how served, 448.

conduct of, certificate of increase or reduction, 448.

filing certificate, 449.

return of surplus to stockholders, 449.

increase or reduction of numbers of shares, 449.

CARRIERS—

refusing to carry passengers, 399.

CAR COUPLERS—SEE **AUTOMATIC COUPLERS**—

use of on freight cars regulated, 246.

railroad commissioners may extend time for compliance, 245.

failure to comply with act; how punished, 245, 246.

CARS AND ENGINES— See **APPLIANCES**.

passenger cars, 31.

CARS AND ENGINES—SEE APPLIANCES—Continued.

- use of stoves and furnaces on, 31, 364.
- placing other cars in trains with passenger cars, 364.
- platforms on, 364.
- injuries to passengers on platforms, 32.
- unlawful transportation of animals in, 397.
- automatic air-brakes, 30.
- tools on, 30.
- drinking water, 31.
- penalty, 31.
- boarding while in motion, 365.
- oils, regulation of on passenger cars, 266.
- baggage cars, injuries to passengers on, 32.
- mail cars, 33, 173.
 - corporations must furnish extra, 33, 173, 174.
 - extra compensation, 33, 173, 174.
 - penalty, 33.
- freight cars, automatic couplers on, 30, 31, 245, 364, 463
- air-brakes on, 462, 463, 464, 465.
- not to be placed in trains with passenger cars, 364.
- riding on, 365.
- "coal-jimmies" equipment of, 462, 464.
- penalties, 463, 464.
- when not to be hauled, 462, 464.
- reports of, 463, 464.
- offered by one company to be taken by another, etc., 271, 364.
- railroad commissioners may make exemptions, etc., 463, 465.
- disinfection of, 267.
- transportation of corpses on, 471-472.
- discharging firearms or missiles at, 389.
- loosening or interfering with brake, 388.
- obstructing passage of, 365.
- running hand car without permission, 388.
- disorderly conduct on, 399.
- oil, lumber, merchandise, etc., cars not to be placed in trains
 - with passenger cars, 364.
- breaking and entering, 396.
- "break;" "building," defined, 396, 397.
- arson, 395.
- liens upon, 275.
- conditional sales, leases or loans of, 237, 238.

CARS AND ENGINES — See **APPLIANCES** — Continued.

- dining cars, stoves or furnaces on, 31, 364.
- jurisdiction of courts over, in case of crime, 403.
- engines, to be provided with spark arrester, 246, 469.
- automatic couplers on, 30, 31, 245, 364, 463.
- driving-wheel brakes on, 462.
- injury to locomotive, 389.
- injury to steam valve, 389.
- liability of persons in charge of engines, 394, 395.

CATTLE GUARDS—SEE **FENCES**, ETC.**CEMETERIES**—

- railways not to cross, 270, 271.

CERTIFICATE OF INCORPORATION—SEE **INCORPORATION**,**AMENDMENT OF CHARTER**—

- defined, 139.
- filing of, 110.
 - not permitted by corporations having same name as existing corporation, 110.
 - exception in case of re-incorporated, re-organized, or consolidated companies, 110.
 - taxes to be paid on incorporation, 110, 295.
 - fees to be paid before filing, 110.
 - powers not to be exercised until fees paid, 110.
 - amended and supplemental names of directors supplied by, 3.
- filing of amended, 460.
- the same; informalities cured by, 111.
 - application to court, 111.
 - effect of, 111.
- lost or destroyed, 111.
- certificate and other papers as evidence, 111.
- of authority of a foreign corporation, 113.
- proof to be filed before granting to foreign corporations, 114.
- on alteration or extension of business, 138e.
- provision in permitting dealing in other stocks and bonds, 138 f.
- may provide for issue of preferred stock, 138 j.
- of railroads what to contain, 3.
- requisites, 3.
- subscriptions, 3.
- rapid transit corporations, 164.

CERTIFICATES—

fictitious issue of, by pipe-line corporations, 374.
sale of, by officers, etc., 382, 383.

CERTIFICATE OF STOCK—

may be issued after foreclosure in certain cases, 44.

CERTIORARI—

' body " or " officer ; " " determination ; " what they include, 352.

review of action of comptroller in settling accounts for taxes, 292, 294.

CHANGE OF NAME—

proceedings to change name of corporation, 443.

petition of corporation, 443.

contents of petition, 444.

notice of presentation of petition, 444.

order thereon, 445.

when change to take effect, 446.

substitution of new name in pending action or proceeding, 446.

reports by clerks to state officers, 446.

CHANGE OF ROUTE, GRADE, OR TERMINUS—

route or termini may be changed by vote of directors, 11.

termini can only be changed to county adjoining that previously designated, 11.

no change where town or county has issued municipal aid bonds, 11.

no change in village or city without consent, 11.

may intersect with other road to reach incorporated city, 11.

may change grade, except in Buffalo, 11.

where grade raised across canal, may change, 12.

CHARTER—

of railroads—may be altered, suspended or repealed, 205.

CHATTEL MORTGAGES—See CONDITIONAL SALES.

when not necessary to file, 237.

CHAUTAUQUA ASSEMBLY LANDS—

railroads not to be constructed across, 9.

CHILDREN—

minor not to ride on platform or steps of car, 270.

duty of policemen and constable to arrest, 270.

fares of, in Buffalo, 220.

CITATION—

service of upon a corporation, 353.

CITIES—See MUNICIPAL CORPORATIONS.

CIVIL AND PUBLIC RIGHTS—

protection of, under Penal Code, 399.

CODE OF CIVIL PROCEDURE—See ACTIONS.

complaint in actions by or against corporations, 320.

when proof of corporate existence unnecessary, 320.

misnomer, when waived, 320.

action against a corporation on a note, etc., 320.

when foreign corporation may sue, 321.

when foreign corporation may be sued, 321.

actions against directors, etc., of a corporation for misconduct, 322.

by whom actions may be brought, 322.

this article, how construed, 323.

receiver of personal property, 323.

receivers commissions, 323.

action by a judgment creditor for sequestration, etc., 323.

action to dissolve a corporation, 324.

the same; by whom to be brought, 324.

temporary injunction, 325.

receiver may be appointed permanent and temporary receiver, 325.

powers, etc., of temporary receiver, 325.

additional powers and duties may be conferred on temporary receivers, 326.

making stockholders, etc., parties, 326.

when separate actions may be brought against them, 326.

proceedings in either action, 327.

judgment; property of corporation to be distributed, 327.

the same; stock subscriptions to be recovered, 327.

as to liabilities of directors and stockholders, 327.

effect of this article limited, 337.

action by attorney-general when legislature directs, 328.

the same, by leave of court, 328.

leave, when and how granted, 329.

action triable by jury, 329.

judgment, 329.

injunction may issue, 329.

copy of judgment roll to be filed and published, 330.

certain corporations excepted from certain articles of this title, 330.

CODE OF CIVIL PROCEDURE—See ACTIONS—Continued.

- injunctions staying actions by creditors, 330.
- creditors may be brought in, 331.
- when attorney-general must bring action, 331.
- requisites of injunction against corporations in certain cases, 332.
- the same; of order appointing receiver in certain cases, 332.
- of judicial suspension or removal of an officer, 333.
- application of last three sections, 333.
- in action against stockholders, misnomer, etc., not available, 333.
- when majority of directors, etc., may petition for dissolution, 334.
- the same; when they are equally divided, 334.
- contents of petition, 334.
- affidavits to be annexed, 335.
- presentation of petition, etc., order to show cause, 335.
- order to be published, 336.
- the same; to be served on creditors and stockholders, 337.
- hearing, 337.
- the same; original papers may be used, 337.
- application for final order, 337.
- final order, 338.
- certain sales, etc., void, 338.
- certain corporations excepted from this title, 338.
- personal service of a summons on a domestic corporation;
 - how made, 339.
 - the same; upon a foreign corporation, 339.
- cases in which the service of a summons by publication, etc., may be ordered, 340.
- actions by and against officers, etc., and by executors, 341.
- service of summons in justice's court upon the company, 341.
- special provisions in regard to railroad corporations, 341.
- relating to express companies, 341.
- verification of pleading, how and by whom made, 342.

CODE OF CIVIL PROCEDURE — See ACTIONS — Continued.

- personal service of injunction upon the corporation, 342.
- damages sustained when officer of a corporation is enjoined, 342.
- grounds of issuing warrant of attachment against the corporation, 343.
- attachment of unpaid subscriptions to foreign corporation, 343.
- of interest in corporations, 343.
- certificate of defendants interest to be furnished, 344.
- persons refusing certificate may be examined, 344.
- when judgment enforced only against attached property, 344.
- preferred causes on trial, 345.
- admission by member of corporation, 345.
- books of corporation, how produced, 345.
- when personal attendance not required by subpoena *duces tecum*, 345.
- books of foreign corporation, when evidence, 346.
- when a copy thereof is evidence, 346.
- how copy to be verified, 346.
- references, how made of actions against corporation, 346.
- judgment by default against foreign corporations, how taken, 347.
- no limitation of action on bank notes, etc., 347.
- action against directors etc., of banks, 347.
- deposition; applications; contents of affidavit, 347.
- jurisdiction of county courts, domestic corporations, etc., when deemed resident, etc., 348.
- verification; how and by whom made. 348.
- public or corporate seal may be stamped, 349.
- action to compel the determination of a claim to real property, 349.
- this article applies to corporations or receivers, 349.
- judgment creditors actions, 349.
- application of this article; what property cannot be reached, 349.
- record of bill of sale, etc., of vessels, 350.
- action against the usurper of an office or franchise, 350.
- attorney-general may maintain action, 350.
- action triable by jury, 350.

CODE OF CIVIL PROCEDURE — See ACTIONS — Continued.

- assumption of office by person entitled, 350.
- proceedings to obtain books and papers, 351.
- damages, how recovered, 351.
- one action against several persons, 351.
- when injunction may be granted, 351.
- final judgment in action for usurping office, 352.
- scire facias, quo warranto, etc., abolished, 352.
- actions brought in the name of the people, 352.
- costs; how collected against corporation and usurpers of franchise, 352.
- certiorari, "body" or "officer;" "determination;" what they include, 352.
- when defendant may require security for costs, 353.
 - after action commenced, 353.
- supplemental proceedings; cases where this chapter is not applicable, 353.
 - what property cannot be reached, 353.
- citation, service upon a corporation, infant, lunatic, etc., 353.
- miscellaneous general definitions and rules of construction, 354.

CODE OF CRIMINAL PROCEDURE—

- revised laws do not repeal provisions of, 123.
- courts of special sessions, jurisdiction of, 403.
- of crime committed in the state on board of any railway train 403.
- plea of guilty, how put in, 403.
- summons upon an information or presentment against a corporation, 403.
 - by whom issued, when returnable, 404.
 - form of summons, 404.
 - when and how served, 404.
- examination of the charge, 404.
- certificate of the magistrate, and return thereof, with depositions, 404.
- grand jury may proceed as in the case of a natural person, 404.
- appearance and plea to indictment and proceedings thereon, 404.
- fine on conviction, how collected, 406.

COMBINATIONS—

prohibited, 137.

COMMISSIONER OF LAND OFFICE—

may grant land to railroads, 9.

Niagara reservation and Coney Island excepted, 9.

COMMON CARRIERS—

liability as; several corporations, 29-30.

liability of sleeping car etc., companies, 25-26.

of baggage, 26-27.

rights and liabilities as, 29-30.

issue of fictitious bills of lading by, 374.

warehouse receipts, 375-376.

selling property received for transportation, 375.

use of words "non negotiable" on receipts, 376.

property demanded by due process of law, 376.

cruelties to animals, 398.

transportation by, of game and fish. 468-469, 269-270.

sale of liquors by, 470.

employment by, of intemperate persons, 265, 363 471.

liability of. *Notes*, 104.

limitation of liabilities of, *Notes*, 104.

refusing to receive passengers, 399.

COMPENSATION—

none where highways laid across tracks, 249-250.

of commissioners, street railways, 55.

on motion to change route of railroad, 7.

on location of route, 7.

COMPLAINT—

in action by or against a corporation, 320.

COMPTROLLER—

may fix assessment, when, 289.

may examine books of corporations, when, 289-290.

may issue subpoenas, and examine witnesses, 290.

to settle and adjust assessment, when, 291.

to give notice before making settlement of taxes, 292.

may issue warrant for collection of taxes, 293.

action may be reviewed by certiorari, 294.

statement to, by supervisors as to tax on corporations,
296f.

reports to, by railroads for purpose of taxation, 295.

when may fix tax and penalty, 296f.

COMPTROLLER—Continued.

- to audit salaries and disbursements of railroad commissioners,
78 m.
- to assess total amount of expense of such commissioners on
railroads, 78 m.
- to assess expense of laying electrical conductors under ground
on certain companies, 296u.
- may sell or exchange forest lands, 251.
- licenses of common carriers, 470.
- approval by, of sufficiency of capital stock where reduced,
138 l.

CONDEMNATION LAW, THE—

- definition of terms, 190.
 - “person;” “real property;” “owners,” 190.
- parties to proceedings, 190.
- title, how acquired, 190.
- petition, 190.
 - contents of, 190.
 - character of corporation, 190.
 - description of land, 190.
 - statement of facts, 191.
 - names and residences of owners, 191.
 - lunatic, infant, etc., 190.
 - non-resident, unknown party, 191.
 - unable to agree with owner, 191.
 - value of, 191.
 - intention to complete work, 191.
 - prayer for relief, 191.
 - presentation of petition, service of notice of, 192.
 - service of, 192.
 - duty of guardian, committee or trustee, 192.
 - guardian *ad litem*, 192.
 - attorney for defendant, 192–193.
 - security of, 192–193.
 - appearances, 193.
 - service of papers, 193.
 - answer to petition, 193.
 - verification of petition and answer, 193.
 - trial of issues, 193.
 - reference, 193.
 - decision; appeal, 194.

CONDEMNATION LAW, THE—Continued.

- provisions of Code applicable, 194.
- judgment, entry of, 194.
- in favor of plaintiff, 194.
 - commissioners of appraisal, 194.
 - notice of appointment of, 194.
- dismissal of petition with costs, 194.
- duty of commissioners, 194.
 - oath; subpoenas for witnesses, 194.
 - notice of hearing, 194.
 - view of premises; proofs, 194–195.
 - award of compensation, 195.
 - no allowances for betterments, 195.
 - where parties are railroad corporations, 195.
 - report of commissioners, with evidence, 195.
 - their compensation, 195.
- confirmation of report, 195.
 - notice of motion for, 195.
 - setting aside, 195.
 - for irregularity, 195.
 - for error of law, 195.
 - excessive award, 195.
- rehearing before same commissioners, 195.
 - conduct of, 195–196.
 - confirmation of, 196.
 - compensation, 196.
 - possession on payment of award, 196.
 - deposit of money, 196.
- offer to purchase by plaintiff, 196.
 - filing of, 196.
- acceptance of, 196.
- order, 196.
- non-acceptance of offer, 196.
 - unless award exceeds offer, no costs allowed, 196.
 - otherwise, etc., costs allowed defendant, 196.
 - taxation of costs, 197.
 - allowance and additional allowance, 197.
 - allowance to guardian, attorney, etc., 197.
- trial, costs to successful plaintiff, 197.
 - taxation of, 197.
 - rate of, 197.

CONDEMNATION LAW, THE—Continued.

- compensation awarded, etc., 197.
 - to be docketed as judgment, 197.
 - effect of, 197.
 - judgment upon, 197.
 - possession upon payment, 197.
 - writ of assistance, 197–198.
- abandonment of proceedings by plaintiff, 198.
 - payment of fees, costs, etc., 198.
 - renewal of proceedings, 198.
- appeal from final order, 198.
 - what brought up by, 198.
 - how all proceedings reviewed, 198.
 - stay of proceedings, effect of, 198.
- appeal from judgment in favor of defendant, 198.
 - after trial, plaintiff may appeal, 198–199.
 - court may affirm, or modify judgment, or grant new trial, 199.
 - costs, how awarded, 199.
- new appraisal, 199.
 - to be final and conclusive, 199.
 - increased compensation a lien, 199.
 - reduction of, difference to be refunded, 199.
- adverse and conflicting claimants to money, 199.
 - money to be paid into court to await determination, 199.
- power of court to prevent disturbance of possession, 199.
 - plaintiff may be continued in, and stay granted on giving security, 199.
- entry upon property after answer interposed, 200.
 - immediate entry, and devotion to public use, 200.
 - deposit of security, 200.
 - disposition of deposit, 200.
- notice of pendency of proceedings, 200.
 - effect of, 200–201.
 - duty of county clerk, 200–201.
- power of court to make all necessary orders, 201.
 - practice similar to that in court, 201.
- repeal, 201.
 - other modes of procedure repealed, 201.
- title when to take effect, 201.

CONDEMNATION LAW, THE—Continued:

of private cemetery lands, 270–271.

by rapid transit corporations, 154.

CONDEMNATION OF LANDS.—

by railroad companies, 4.

where purchase cannot be made or owners found, 8.

where title has been found to be defective, 8.

where railroad is in possession of lessee, mortgagee or receiver,
and more land is needed, 8.

where more land needed for switches, or turnouts or for
widening road, 8.

the same, for flow of water, 8.

the same, for flow of water, or where it is required to convey
water, lay aqueducts, excavate, etc., 8.

waters used for agricultural or manufacturing purposes not to
be interfered with injuriously, 8.

lands of other railroad not to be taken except to intersect or
cross the tracks, 8.

costs in proceedings for, *Notes*, 185.

not to be instituted until notice given to occupants, 7.

of lands where necessary to change line of highway turnpike
or plankroad, 10.

lands so taken become part of intersecting highway, etc., 10.

acquiring right to cross or occupy turnpike or plankroad, 10.

notice of location to be given fifteen days before condemning
lands, 7.

CONDITIONAL SALES.—

railroad equipment and rolling stock, 238.

to be in writing, 239.

to be recorded in book of mortgages, 239.

name of vendor, etc., to be on car or locomotive, 239.

construction of act, 239.

instruments, where to be filed, 238–239.

duty of clerks and registers, 238.

provision not applicable to contracts which have been or
must be recorded, 238.

CONNECTING ROADS —

facilities must be furnished connecting roads for interchange
and forwarding traffic, 22.

CONSOLIDATION —

of railroad corporations, 36.

CONSOLIDATION—Continued.

- with railroads or bridge corporation, 36.
- with tunnel corporation, 36.
- lines to form a continuous or connected line, 37.
- intervening railroad bridge, tunnel or ferry, 37.
- completing construction of railroad, 37.
- where part is tunnel or sub-surface road, 37.
- connecting roads not to be debarred from tunnel or bridge, 37.
- tax required, 295.
- conditions, 37.
 - joint agreement, 37.
 - amount of capital stock, 37.
 - not to exceed that of merging corporations, 37-38.
 - bonds not to be issued as consideration for, 38.
 - agreement to be submitted to stockholders, 39.
 - consent in writing, 38.
 - certified copy to be filed, 38.
 - in case of non-consent in writing, 38.
 - submission to stockholders, 38.
 - notice of meeting, how served, 38.
 - vote by ballot, 38.
 - certified copy to be filed, 38.
 - effect of consolidation, 38-39.
 - new corporation, 39.
 - vesting property and rights in, 39.
 - title to real estate not impaired, 39.
 - issue of bonds by, 38.
 - mortgage to secure bonds, 39.
 - consent of stockholders, 39.
 - bondholder not compelled to accept payment before due, 39.
 - creditors' rights not impaired, 40.
 - actions not abated, 40.
 - assessment of property of new corporation, 40.
 - how effected, 40.
 - on capital stock, 40.
 - stock of municipal corporation, 40.
 - how represented, 40.
 - foreclosure of mortgages made by consolidated railroads under decree in another state, 40-41.

CONSOLIDATION—Continued.

- confirmed by court in this state, 41.
- sale becomes effectual, 41.
- when judgment or decree may be confirmed in pending actions, 41.
- liens, protection of after consolidation, 41.
- receiver, powers and duties of, 41.
- powers of corporations of other states, 41.
 - may operate line in this state, 41.
 - and possess all rights of mortgagor of railroad, 41.
 - duties and liabilities of, 41-42.
 - certificate of incorporation, judgment, etc., to be filed, 42.
 - consolidation of parallel lines prohibited, 43-44.
 - consent of railroad commissioners required, 43-44.
 - consolidation lease, etc., *Notes*, 90.

CONSTITUTIONAL LAW—

- authority for creation of corporations, 178.
- charter, may be altered, suspended or repealed, 205.
- creation by special act, 178.
- alteration or repeal of laws, 178-179.
- debts of corporations, how secured, 179.
- liability of corporators, 179.
- state or municipal aid not to be given railroads, 222.
- public park or square not to be used for tunnel roads, 14.
- change in roadbed upon change of motive power, 58.
- tunnel railroads in cities, 14.
- entry upon land for purposes of survey, 4.
- winding up corporations dissolved by legislature, 302.
- extending highways across railways without compensation, 249-250.
- reorganized corporations relieved from obligations to extend line, 44.
- relief of street railroad companies, 465.
- rapid transit corporations to build upon routes adopted by commissioners, 73.
- recommendation of railroad commissioners where law has been violated, 78i.
- assessment of expenses of railroad commissioners on corporations, 78m.
- condemnation of lands, payment of compensation into court to await determination, 199.

CONSTITUTIONAL LAW—Continued.

consent of property owners to be obtained before constructing street railroad, 212.

CONSTRUCTION OF STATUTES—

general railroad law—to whom applicable, 78m.

laws repealed by, 79–82.

general corporation law, construction of, 123.

conflict of corporate laws with general corporation or stock corporation laws, 122.

not in conflict with same, 122.

substantially same as prior laws, 123.

a continuation of prior laws modified or amended, 123.

not new enactments, 123.

references to laws incorporated, 123.

existing laws not affected, 123.

no amendment or repeal of Criminal or Penal Code, 123.

not to impair rights or liabilities of corporations, officers, stockholders, etc., 123.

law revived by, 123.

laws repealed by general corporation law, 124–132.

statutory construction law, 138p.–138w.

laws repealed by, 138w.

time of taking effect, 138w.

rapid transit act, 177–178.

not to repeal certain acts, 177.

nor affect certain acts, except, etc., 177.

not to affect or impair certain rights of corporations, 177.

no surface roads to be constructed in New York under, 178.

repeal of inconsistent acts, 178.

when to take effect, 178.

condemnation law, 201.

repeal of inconsistent acts, 201.

provision as to New York, 201.

title, when to take effect, 201.

proceedings for the sale of corporate real property, 202.

title, when to take effect, 204.

hours of labor on railroads, 209–210.

payment of municipal bonds, 234.

corporations owning canals, 253.

CONSTRUCTION OF STATUTES—Continued.

- electric light and power companies, 253-254.
- plankroad and turnpike companies, 254.
- adjustment of grievances between employer and employees, 271.
- mechanic's lien law, 277.
- payment of taxes by railroads, 283-284.
- receivers, acts relating to, 299, 302, 307.
- Penal Code, punishment, how determined, 360.
- Criminal Code, 403.
- relief of street surface railroads, 466.

CONSTRUCTION OF ROAD—

- width of railway, 4.
- of part of line in another state, 12.
- sections of road in this state to be deemed a connecting line, 12.
- capital stock may be reduced, 12.
- weight of rail, 19.
- switches; warning signals; guard-posts, 30.
- on public grounds or parks, 9, 63.
- elevated; improvement, of, 211.
- in New York City, 210, 155, 175, 218.
- in Brooklyn, 211, 221.
- in Buffalo, 219.
- through Chautauqua grounds, 9.
- through Indian lands, 9.
- through cemeteries, 270.
- near or across canals, 252.
- across public highways, 250.
- through public forest lands, 250.

CONTAGIOUS DISEASES—

- when hermetically sealed coffins required, 266, 471-472.
- prevention of, in animals, 267.
- transportation of bodies; permits required, 471-472.
- exposing persons affected with, 388.

CONTRACTS—

- for conditional sale of personal property on credit to be filed, 237-238.
- instruments, where to be filed, 237-238.
- the same; not applicable to contracts which have been or must be recorded, 238.
- for lease or conditional sale of equipment and rolling stock to be filed, 238-239.

CONTRACTS—Continued.

- invalid as to judgment creditors and purchasers, without notice, unless evidenced in writing and recorded, 239.
- name of vendor, etc., to be on locomotive or car, 239.
- not to invalidate any contract heretofore made if recorded within ninety days, 239.

CORPORATIONS—

- definition, 109, 179.
- right to sue and be sued, 179.
- dues from, 179.
- sale of franchise and property, 447.
- effect of such sale, 447.
- consent of stockholders, 447.
- proceedings by dissatisfied stockholder, 447.
- appraisal of stock, 448.
- powers of railroad, when to cease, 449.
- insolvencies of, when deemed fraudulent, 369.
- frauds in organization of, 366.
- acting for foreign not authorized to do business, 367.
- action to annul, 324.
- when proof of necessary, 320.
- certain exempted from provisions of Code Civ. Pro., 330.
- domestic, etc., when deemed residents, 348.
- fraudulent conveyances by, 373.
- issuing fictitious certificates by, 374.
 - bills of lading, etc., by, 374–375.
- when may assume another name, 206.
- when existence must be proved, 207.
- constitutional provision for organizing, 178.
- not to use “pay envelopes,” 268.
- nor post notices to influence or intimidate voters, 268.
- owning canals may construct and operate railroads, 253.
- of same name prohibited, 110.
- extension of existence, 120–121.
- rights and duties of, *Notes*, 139.
- need not recognize over issue of stock, *Notes*, 146.
- cannot ratify certain *ultra vires* acts, *Notes*, 146.
- not responsible for tortious acts of shareholders, *Notes*, 146.
- dissolution and forfeiture of, *Notes*, 147.
- service of process upon, *Notes*, 148.
- lien upon shares, *Notes*, 148.

CORPORATIONS—Continued.

liability of to employees of contractors, *Notes*, 186.

certificate of incorporation, filing of, *Notes*, 142.

CORPORATE POWERS—See POWERS.

when to cease, 5, 449.

CORPORATION LAW, THE GENERAL—

classification of corporations, 108.

definitions of corporations, 108.

disqualification of incorporators, 109.

filing and recording certificates of incorporation, 110.

duplicate certificate to be refiled, 110.

tax to be paid before certificate filed, 110.

corporations of same name prohibited, 110.

name where re-incorporation or re-organization effected, 110.

amended or supplemental certificate, 110.

defects may be remedied, 111.

effect of amended certificate, 111.

lost or destroyed certificates, 111.

certificate and other papers as evidence, 111.

prohibition of other than statutory powers, 111.

grant of general powers, 112.

to have succession, 112.

to have a seal, 112.

to acquire property by purchase, gift, etc.; to dispose of the same, 112.

to appoint officers and agents, 112.

to make by-laws, 112.

effect of by-laws, 112.

publication of by-laws, 112.

limitations of amount of property of a non-stock corporation, 112.

how value of property computed, 112.

acquisition of additional real property, 113.

acquisition of property in other states, 113.

certificate of authority of a foreign corporation, 113.

such corporation must procure certificate, 113.

actions not maintainable until certificate procured, 114.

proof to be filed before granting certificate, 114.

certificate of incorporation to be filed, with statement of objects of business, 114.

designation of person upon whom to be served, 114.

CORPORATION LAW, THE GENERAL—Continued.

- revocation of authority, 114.
- acquisition of real property in this state by certain foreign corporations, 114.
- the same, upon judicial sales, 115.
- prohibition of banking powers, 115.
- qualifications of members as voters, 115.
- who may vote, 115.
- certificate of incorporation may provide manner of voting, 115.
- cumulative voting, 116.
- voters must have owned stock ten day before election, 116.
- votes or proxies not to be sold, 116.
- record of membership may be produced, when, 116.
- procedure where challenge made, 116.
- proxies, 116.
 - voting by proxy, 116.
 - who may act as proxy, 116.
 - how proxy to be executed; its limitations, 116.
 - proxies revocable, 116.
- challenges, 117.
 - procedure where challenge made, 117.
 - oath to be administered, 117.
 - forms of oath, 117.
 - inspectors may administer oath, 117.
- effect of failure to elect directors, 117.
- former directors may hold over, 117–118.
- mode of calling special election of directors, 118.
- directors to call meeting and issue notice thereof, 118.
- members may call meeting, and give notice thereof, 118.
- mode of conducting special elections of directors, 118.
- where to be conducted, 118.
- quorum; election of inspectors; adoption of by-laws, 118.
- qualification of voters and canvas of votes at special elections, 118.
- statements to be presented in lieu of books, 118.
- what such statements to contain, 119.
 - duty of inspectors, 119.
- powers of supreme court respecting elections, 119.
- may inquire into legality of election, 119.

CORPORATION LAW, THE GENERAL—Continued.

stay of proceedings in actions collusively brought, 149.

 court may vacate actions collusively brought, 119.

quorum of directors and powers of majority, 120.

qualifications of directors, 120.

what constitutes quorum; by laws, 120.

directors as trustees in case of dissolution, 120.

they shall collect and distribute assets, 120.

liability of directors for such property, 120.

forfeiture for non-user, 120.

extension of corporate existence, 120.

 new certificate to be executed, 120–121.

 how filed and recorded, 121.

proceedings where corporate existence has expired, and bonds
 have been issued, 121.

supreme court may revive existence of corporation, 121.

effect of such revival, 121.

procedure in such cases where corporation formed under
 banking or insurance law, 121.

the same—turnpike or bridge corporation, 121.

such corporations shall be subject to this act and to general
 laws, 122.

conflicting of corporate laws, 122.

 prior laws to prevail, 122.

 laws repealed by this act, 122.

 saving clause, 122.

construction of this act, 123.

 is a continuation of prior laws, 123.

 does not amend or repeal Criminal or Penal Code, nor
 impair vested rights, 123.

 how revived by this act, 123.

 schedule of laws repealed by this act, 124–132.

COSTS —

 how collected against corporation and usurpers of franchise,
 352.

 when defendant may require security for, 353.

 after action commenced, 353.

 in railway cases, *Notes*, 104.

CREDITORS —

 when may be brought in, in action against corporation,
 331.

CREDITORS—Continued.

judgment creditors' action, 349.

application of this article, 349.

what property cannot be reached, 349. .

CROSSINGS AND INTERSECTIONS — See GRADE CROSSINGS.

railroads may cross or intersect other railroads, 4.

railroads to unite in forming intersections, 10.

disagreement as to compensation, 10.

as to manner of crossing, 10.

commissioners to be appointed, 10.

one to be civil engineer, 10.

map to be made, 10.

interchange of freight, 10.

tariff in such cases, 10–11.

connection with tunnel roads, 14.

crossings of street railroads, 59.

rapid transit railroads not to cross steam railroads at grade, 72.

crossing by rapid transit railroads of horse railroads, 72.

temporary removal of horse railroad, 72.

rapid transit roads connected with other railroads, 171.

corporations to unite in forming crossings, etc., 171.

in case of disagreement as to compensation commissioners to be appointed, 171–172.

rapid transit railroad commissioners may decide manner of crossing, 172.

rapid transit roads in large cities, connection of other railroads with, 175.

rapid transit railroad commissioners to fix compensation, and manner of intersection, 175.

connection with steam ferries, 175.

ringing bells, etc., at, 363–364.

accidents at, *Notes*, 98.

CROSSINGS OF HIGHWAYS—See HIGHWAYS.

consent of highway commissioners to crossings, 250.

highways may be laid across tracks, 249.

CROSSINGS — OVER TRACKS.

warning signals at, 30.

penalty for neglect, 31.

CUTTINGS AND EMBANKMENTS—

land necessary for, 4.

land acquired by condemnation, 8.

CRIME—

committed outside of state, 403.

committed in the state on board railway train, 403.

COUNTY COURTS—

jurisdiction of, 348.

domestic corporations, etc., when deemed residents, etc., 348.

may order flagmen and gates at crossings, 21.

confirmation of contracts for Indian lands by, 9.

COUNTY JUDGE—

may order county treasurer to comply with provisions in regard to purchase of bonds, 234a.

COUNTY OFFICERS—

may grant land to railroads, 9.

COUNTY TREASURER—

payment of railroad taxes to, 234a.

duties of, 234a.

may be compelled to execute law regarding purchase of bonds, 234a.

security given by, 234a.

annual report of, 234a.

taxes to be paid to, 296c.

to notify collector of non-payment, 296d.

COUPLERS—See AUTOMATIC COUPLERS, CARS, ETC.

automatic, on freight cars, 245, 463.

penalty for neglect, 245-246, 464-465, 364.

DAMAGES—

sustained when officer of corporation is enjoined, 342.

measure of for appropriating lands, *Notes*, 187.

measure of occasioned by elevated railroads, *Notes*, 187.

by fires caused by railroads, *Notes*, 100.

by diversion of water courses, *Notes*, 101.

DEBTS OF CORPORATIONS—

how secured, 179.

not to exceed paid up capital stock, 138a.

where capital reduced, not to exceed amount existing, 138h.

not affected by surrender of stock from lessor to lessee, 43.

liability of corporation to employees of contractor, 19.

not impaired by consolidation, 40.

DEFINITIONS—See CONSTRUCTION OF STATUTES.

- "body" or "officer;" "determination," 352.
- "superior city courts;" "*mandate*," 364.
- "judge;" "clerk;" "report," 354.
- "personal property;" "property," 355.
- "personal injury;" "injury to property," 355.
- "affidavit;" attachment, when "amended," 355.
- "judgment creditor;" judgment creditors action, 355.
- "lunacy;" "lunatic," 355.
- "distinct parcel" of real property, 355.
- "territory;" "domestic corporation," 356.
- "trial juror;" "trial jury;" "petit juror;" petit jury;"
"action;" "public holiday," 356.
- "written or printed instrument;" "folio," 356.
- "dues" from corporations, 179.
- "municipal corporation," 108.
- "stock corporation," 109.
- "mixed corporation," 109.
- "monied corporation," 109.
- "domestic corporation," 109, 356.
- "foreign corporation," 109, 356.
- "directors," 109.
- "certificate of incorporation," 109.
- "member of corporation," 109.
- "office of corporation," 109.
- "business corporation," 109.
- "corporate law or laws," 109.
- "person," 190.
- "real property," 190.
- "owner," real estate, 190.
- "land" for purpose of taxation 296a.
- "land," "personal estate," 296b, 296c.
- "lines" defined, 296l.
- "estate," "property," 296r.
- "transfer," 296r.
- "county treasurer," "district attorney," 296c.

DEFINITIONS — UNDER PENAL CODE.

- "neglect," "negligence," "negligent," "negligently," 361.
- "corrupt," "corruptly," 361.
- "malice," "maliciously," "knowingly," 361.
- "intent to defraud," "vessel," 361.

DEFINITIONS—UNDER PENAL CODE—Continued.

- "signature," "writing," 361.
- "property," "singular number," 361.
- "gender," "tense," 361.
- "person," "real property," "personal property," 362.
- "affixing," 384.
- "company," 379.
- "forge," "forging," 383.
- "municipal corporation," 108.
- "stock corporation," 109.
- "mixed corporation," 109.
- "monied corporation," 109.
- "domestic corporation," 109.
- "directors," 100.
- "certificate of incorporation," 109.
- "member of corporation," 109.
- "office of corporation," 109.
- "business of a corporation," 109.
- "corporate law or laws," 109.
- "cumulative voting," 116.

DEBTS OF CORPORATIONS —

- how secured, 179.
- not to exceed paid up capital stock, 138a.
- where capital reduced, not to exceed amount existing, 138h.
- not affected by surrender of stock from lessor to lessee, 43.
- liability of corporation to employees of contractor, 19.
- not impaired by consolidation, 40.

DEPOSITIONS —

- application for; contents of affidavit, 347.

DEPOTS — See STATIONS.

DINING CARS —

- stoves, etc., not allowed on, 31, 364.
- cooking appliances, how regulated, 31.

DIRECTORS AND OFFICERS —

- defined, 109, 373.
- effect of failure to elect, 117–118.
 - special elections, 118.
 - how called, 118.
 - notice, how published, 118.
 - how conducted, 118.
 - where held, 118.

DIRECTORS AND OFFICERS—Continued.

- quorum, 118.
- election of inspectors, 118.
- adoption of by-laws, 118.
- effect of failure to elect, 118.
- quorum of directors, 120.
- powers of majority, 120.
- as trustees in case of dissolution, 120.
 - may sue to recover debts, etc., 120.
 - liabilities as such, 120.
- policy holders of insurance corporation eligible as, 138.
- power to execute supplemental certificate 111.
- to be elected by majority of votes, 137–138.
 - vacancies, how filled, 138.
 - notice of election, 138.
 - at least one-fourth to be elected annually, 138.
- by-laws for election of, 120.
- election of where no by-laws in force, 118.
- effect of holding over through failure to enact by-laws, 138–139.
- change of number of, 138.
 - how effected, 138.
 - notice of meeting therefore, how served, 138.
 - transcript of minutes to be filed, 138.
 - under banking law, 138.
 - under insurance law, 138.
- when acts of void, 138.
 - proceedings incurring liability fraudulent and void, 138–139.
- liability of, for making unauthorized dividends, 138a, 367.
- forbidden to distribute or reduce capital, 138a.
- liability therefor, 138a.
- dissenting director may enter protest on minutes, 138a.
- may distribute assets on dissolution, 138a.
- liability of, for unauthorized debts, 138a.
 - for over issue of bonds, 138a.
 - for damages, 138a.
- liability for loans to stockholders, 138a–138b.
 - not to discount notes, etc., 138a–138b.
 - liability of directors therefor, 138b.
- names of, to be stated in certificate of incorporation, 2.

DIRECTORS AND OFFICERS—Continued.

- affidavits by, on incorporation, 2.
- names of, may be inserted in supplemental certificate, 3.
- may change route and grade of railroad, 11.
- construction of part of route in another state, 12.
- may be ex-officio directors of leased railroads, 43.
- invested with rights and duties of leased roads, 43.
- chosen under rapid transit act, 165.
 - number and qualifications of, 165.
 - may make by-laws, 165.
- of rapid transit corporations, 168.
 - to manage affairs of, 168.
 - vacancies, how filled, 168.
 - qualifications of, 168.
 - books to be exhibited, 168,
 - may require payment of subscriptions as they deem proper, etc., 168.
- falsely indicating persons as, 370.
- conversion of property, 370.
- when presumed to have knowledge of condition of corporation, 371, 373.
- misconduct of on elevated roads, 363.
- misconduct of, 371, 373.
 - increasing capital stock, 371.
 - selling or being interested in sale of stock, 371.
 - takes property, or makes entry in books with intent to defraud, 371.
 - omits to make entry in book, 371.
 - publishing false report, 371.
 - refuses inspection of books, 372.
 - conceals notice of injunction, etc., 372.
- misconduct at elections, 372.
 - voting or issuing proxy without right, 372–373.
 - sells vote or proxy, 373.
 - violates oath as inspector, 373.
- of stock corporations, 367.
 - making dividend except from surplus, 367.
 - divides or withdraws capital, 367.
 - discounts note, etc., 367.
 - to enable stockholder to withdraw funds, 368.
 - purchase of stock, 368.

DIRECTORS AND OFFICERS—Continued.

- receiving shares in payment of debts, 368.
- unlawful exchange of stock, 368.
- of monied corporations, 368, 370.
 - participates in fraudulent insolvency, 368.
 - does unlawful act, or omits duty, 368.
- fraudulent issue of stock, script, etc., by 366–367.
 - sells, pledges or issues certificates without authority, 366.
 - re-issues, sells, pledges, etc., cancelled certificates, etc., 367.
- violation of duty of, monied corporations, 370.
- misconduct of, pipe—line corporations, 372.
 - refuses to transport products, etc., 372.
 - makes charges contrary to regulations, 372.
 - makes rebates, etc., 372.
 - issues fictitious certificates, etc., 374.
 - delivers goods without orders, etc., 374.
 - neglects to stamp “cancelled” on vouchers, etc., 374.
- officer publishing false report, 369.
- selling shares, when a misdemeanor, 370.
- action against, 341.
- action against for misconduct, 322.
- against director of banks, 347.
- participating in fraudulent insolvency, how punished, 369.
- presumed to have knowledge of corporate laws, when, 371.
- presumption of knowledge of corporate condition and business, and assent thereto, 373.
- when majority of is sufficient to constitute a quorum, 206.
- may change in certain cases time for holding elections, 206.
- to appoint president, secretary, and other officers, 207.
- increase or reduction of number of directors for stock corporation, 409.
- directors, rights and duties of, *Notes*, 142.

DOCUMENTS—

- in hands of attorneys, not reached by subpoena *duces tecum*, 409.

DISCRIMINATION—See COMBINATION.

- report of by railroad commissioners to attorney-general, 78j.

DISEASES—See CONTAGIOUS DISEASES.

DISSOLUTION—See VOLUNTARY DISSOLUTION.

effect of as to consents, 61.

rights and franchises not to be impaired after railroad constructed, etc., 61.

franchise to be sold, 61–62.

purchaser obtains full title to, 62.

when effected by legislature, 302.

dissolution and forfeiture, *Notes*, 147.

DISORDERLY CONDUCT —

on public conveyances, 399.

DIVIDENDS —

unauthorized, 138a, 367.

not to be made except from surplus profits, 367.

declaration of, *Notes*, 143.

DOCK —

injury to, 391.

interference with in constructing railroad, 14.

DOMESTIC CORPORATIONS — See CORPORATIONS.

defined, 109, 356.

DRAWING-ROOM CARS — See SLEEPING CARS.

ELECTRIC RAILROADS —

electric light and power company may construct, 17.

may operate in summer only, 18.

for summer travel, 18.

fares on, 18.

street surface railroad may change to electricity as motive power, 58.

approval of railroad commissioners and property owners, 58.

determination of commissioners in lieu of consents, 58.

provisions applicable, 58.

change of roadbed, if necessary, 58.

injuries to, 389.

ELECTRIC LIGHT AND POWER COMPANY —

may construct and operate railroads, 17, 253–254.

may construct twenty miles of road, 17, 254.

but not street surface road, 17, 254.

except in cities, 17, 254.

ELECTIONS —

who may vote at, 109, 372–373.

qualifications of voters, 115, 372–373.

ELECTIONS—Continued.

- all members not in default, 115.
 - pledgor, 116.
 - certificate of incorporation may regulate, 115.
 - cumulative voting, 116.
 - voter must have owned stock ten days, 116.
 - vote not to be sold or proxy issued for money, 116.
 - books to be produced as evidence of right to vote, 116.
 - proxies, 116, 372-373.
 - who may act as such, 116.
 - how executed, 116.
 - shall be revocable, 116-117.
 - challenges, 117.
 - oath of person offering to vote, 117.
 - oath of person offering proxy, 117.
 - on failure to elect, directors hold over, 117.
 - supreme court may intercede, 119.
 - who may demand relief, 119.
 - notice to adverse party, 119.
 - may confirm election or order a new one, 119.
 - special elections of directors, 118.
 - proceedings in absence of books, 118.
 - sworn statements as to qualifications, 118-119.
 - votes may then be cast, 119.
 - inspectors to file such statements with certificate of result, 119.
 - inspectors of elections, 138b-138c.
 - how appointed; qualifications, 138b.
 - compensation of, 138b-138c.
 - oath; filing of, 138c.
 - duties of, 116, 117.
 - violation of oath by, 373.
 - dishonest or corrupt, 373.
 - voting on stock or bonds owned by another, 372-373.
 - misconduct at, 372-373.
 - change of time for holding, 206-207.
- ELEVATED ROADS — See RAILROADS IN CITIES AND COUNTIES — RAPID TRANSIT RAILROADS.
- hours of labor upon, 209.
 - penalty for violation of act, 209.
 - in cities; abandonment of part of route, 208.

ELEVATED ROADS — See **RAILROADS IN CITIES AND COUNTIES**—**RAPID TRANSIT COMMISSIONERS**—Continued.

unused portion may be abandoned by declaration of directors, 208.

notice to be given stockholders thereof, 208.

stockholders and railroad commissioners to approve declaration, 209.

certificate to that effect to be filed, 209.

CHARTER —

notice by publication of application to alter, amend or extend, 205.

of railroad, may be altered, suspended or repealed, 205.

forbidden in certain streets of New York city, 210.

not permitted in parts of Broadway, Fifth and Fourth avenues, and in parks, 211.

not to be built in Washington street, Brooklyn, except, etc., 211.

not authorized under general act of 1850, *Notes*, 187.

negligence of, *Notes*, 187.

measure of damages occasioned by, *Notes*, 187.

EMPLOYEES —

liability of corporation to employes of contractor, 19, 277.

service of notice, 19.

statement of particulars, 19.

liability of stockholders to, 138m.

for what services, 138m.

notice to be served, 138m.

executor, guardian, etc., not liable, 138n.

but estates liable, 138n.

exceptions, 138n.

pledgor of stock liable, 138n.

limitation of stockholders' liability, 138n.

execution must be first returned unsatisfied, 138n.

not liable for debt not due within two years, 138n.

nor unless action brought within two years, 138n.

not liable after stock disposed of, nor unless action brought within two years therefor, 138n.

liability of sleeping car companies for acts of, 25–26.

not to be addicted to intoxicating liquors, 26, 211, 471.

to wear badges, 26.

to deliver checks for baggage, 26.

EMPLOYES—Continued.

- penalty for injury to baggage, 27.
- as policemen, 34–35.
- selling tickets for connecting steamboats, 28.
- intimidation of as voters, 402.
- coercion to prevent joining labor organizations, 400.
- on elevated railroad, duties of, 363.
 - want of care, 363.
 - obstructing passenger, 363.
 - mismanagement of gates, 363.
- intoxication of, 363.
- violation or omission of duty, 363.
- mismanagement of steam boilers, 394.
 - of machinery, 394.
 - of steam engines, 395.
- trainmen to report fires, 246–247, 469–470.
- trackmen to extinguish fires, 246–247, 469–470.
- wages of to be preferred in payments by receivers, 307.
 - weekly payment of, 240, 466.
 - penalty for violation, 240, 466.
 - assignment of wages forbidden, 240, 466–467.
 - to be paid in cash, 239–240.
- to be uniformed, 365.
- adjustment of grievances between and employers, 271.
- may cease work to vote without loss of pay, 268.
- of intemperate habits to be refused work, 265.
- hours of labor upon street and elevated railroads, 209, 468.
 - penalty for neglect, 209, 468.
- extra compensation, 468.
- liability of corporation to, *Notes*, 186.

ENGINEERS —

- illiterate persons not to be employed as, 362.
- duties of, locomotive, 363.
- failure to stop at grade crossings, 23.
- intoxication of, a misdemeanor, 174.
- unauthorized pressure of steam, 394.
- bursting of engine, through negligence, 394.
- liability for negligently causing death, 395.
- mismanagement of steam boilers, 394.
- intoxication of, a misdemeanor, 363.

ENGINEERS—Continued.

- must be able to read, 362.
- willful violation or omission of duty, 363, 365.
- to ring bell or sound whistle at crossings, 363.
- obstructing farm or highway crossing, 364.

ENGINES—See CARS AND ENGINES, ENGINEERS, FIRES.**EVIDENCE —**

- when officers or agents of corporation compelled to testify, 330.
- admission by member of corporation, 345.
- books of corporation, etc., how produced, 345.
- when personal attendance not required by subpoena *duces tecum*, 345.
- book of foreign corporation, when evidence, 346.
- when a copy thereof is evidence, 346.
- how copy to be verified, 346.

EXECUTORS —

- liability of persons holding stock as, 138n, 169–170.

EXPLOSIVE —

- placing near building, 393.
- keeping and unauthorized use of, 393.
- shipment of, without disclosing character, 393.
- placing near buildings, etc., 293–294.
- injuries to buildings by, 393.

EXTENSION OF BUSINESS—See ALTERATION OF BUSINESS.**EXTENSION OF CORPORATE BUSINESS —**

- by consent of owners of two-thirds of stock, 120.
 - amendment and filing of certificate, 121.
 - effect of, 121.
 - under banking law, 121.
 - under insurance law, 121.
 - turnpike or bridge corporation, 121.
- where bonds become payable after expiration of charter, 121.
 - supreme court may order revival of corporation, 121.
 - construction of act, 122.

EXTENSION OF RAILROADS —

- street surface railroads, 45–46, 49, 55–56, 465.
 - over Hudson river, 56.
 - over bridges, 59.
 - re organized railroads, 44.
 - of rapid transit railroads, 175.

FACTORY INSPECTORS —

duty of respecting payment of wages, 467.

FARE, RATE OF —

right of railroads to receive, 2.

general tariffs of, 23-24.

New York Central Railroad, 24.

on cable railroads, 23.

on narrow guage roads, 23.

on mountain roads, 23.

lines not exceeding fifteen miles in length, 24.

on roads for summer travel, 17, 18.

150 pounds of baggage included in, 23, 26.

on consolidated roads, 24.

alteration or reduction of, 25, 78i.

legislature may alter or reduce, 25, 59.

limitations of such power, 25.

penalty for excessive, 25.

passenger refusing to pay may be ejected, 25, 174.

sleeping or drawing room cars, 25.

on street railroads, how arranged, 458.

to be refunded if check refused, 26.

on street railroads, 59.

on rapid transit roads, 174.

railroad commissioners may recommend changes of, 78i.

information regarding to be furnished railroad commissioners, 78i.

terms of sale of rapid transit roads to state fares, etc., 161.

extra fares may be exacted where no ticket is purchased, 241.

rebate ticket issued therefor, 241.

rates to immigrants and second class passengers, 255.

annual reports of such rates, 255.

rates to immigrants, 257.

rate of where road not over ten miles long, 18.

railroads may fix, 23.

where motive power is rope or cable, 23.

or locomotives with cogs, 23.

road not incorporated prior to May 15, 1879, or in counties of New York or Kings, 24.

by laying a third rail, 24.

where road overcomes certain elevations, 24.

FARE, RATE OF—Continued.

where road does not exceed fifteen miles in length, 24.
in other cases, 24.

for connecting steamboat or train, 28.

penalty for neglect to sell, 28.

FARM CROSSINGS—See **FENCES, FARM CROSSINGS AND CATTLE-GUARDS.**

obstruction of is a misdeameanor, 363-364.

FELONIES—

fraudulent issue of stock, script, etc., 366.

frauds in procuring organization, corporation, etc., 367.

frauds in keeping accounts, 368.

conversion by trustee, 370.

issuing duplicate bills of lading, 375.

selling, hypothecating or pledging property received for transportation, 375.

failing to cancel receipt issued by warehousemen, 375.

fraud on accounts, 377.

unauthorized sale of passage tickets, 376-378.

forgery, 379-380.

false certificate to certain instruments, 380.

second degree, 380-381.

third degree, 381.

forging passage tickets, 382.

by officers, etc., 382-383.

falsely indicating person as corporate officer, 383.

uttering forged instruments, 383.

uttering writing signed with wrong doers name, 383.

fitting out or lading any vessel with intent to wreck, 385.

altering, etc., signal light for vessel, 386.

violation of quarantine laws by master of vessel, 387.

giving information or permitting persons to land before visit of health officer, 387.

landing from vessel before visit of health officer.

going on board vessel at quarantine grounds, without leave, 387.

injuries to property, or interfering with railroad property, 388.

injuries to railroad tracks, etc., 389.

endangering life by maliciously placing explosive near building, 393.

keeping gunpowder, etc., 393.

FELONIES—Continued.

- negligent use of machinery, 394.
- killing by overloading passenger vessel, 394.
- negligence of persons in charge of steamboats, 395.
- negligence of persons in charge of steam engines, 395.
- negligence of owner of animal, 398.
- arson, 395.
 - second degree, 395.
 - third degree, 395.
- burning certain property, 396.
- burglary, 396.

FENCES, FARM CROSSINGS AND CATTLE GUARDS—

- railroads must erect fences, 19–20.
 - requirements of, 20.
- farm crossings and gates, 20.
- cattle guards, 20.
- liability of company for neglect, 20.
- wire fence, 20.
- barbed-wire prohibited, 20.
- not required unless necessary, 20.
- where land owner has agreed to build fences, 20.
 - on default, company may make, 20.
- to be erected in forest or timber lands, 20.
- banking for floating logs in streams, 20.
- mandamus* to compel compliance with act, 20.
- applicable to highways laid across railroads, 249.
- erection and maintance of, *Notes*, 102.

FERRIES—

- railroads may maintain and operate, 32.
- extension of street railroad to connect with, 59.
- reservations as to New York and Brooklyn, 32.
- to connect with rapid transit railroads, 73, 175.
- unlawful maintainence of, 385.
- violating recognizance to keep, 385.
- maintaining by railroads, *Notes*, 89.

FIRES—

- in forest lands.
 - railroads to burn all inflammable material, 245.
 - locomotives to be provided with spark arrester, 246.
 - fire, coals or ashes not to be deposited near woodlands, 246.

FIRES—Continued.

- employees to report fires, 246.
- men to be provided to extinguish, 246.
- penalty for neglect, 247.
- and lights on vessels in certain counties, 386.
- grass to be cut in woodlands, 469.
- employees to report and extinguish, 470.

FLAGMEN—

- at crossings, court may order, 21.

FINE—

- against corporation for failure to light or ventilate tunnels, 244.
- collection of against a corporation, 406.

FORECLOSURE—

- of mortgages made by consolidated railroads partly in the state, 40.
- sale passes title to line in this state, 41.
- judgment of foreclosure in actions now pending, 41.
- where a receiver is appointed, 41.
- powers of corporations of other states derived under foreclosure, 41.
- duties and liabilities of such corporations, 41.
- effect of filing certificate of incorporation, decree, etc., 42.
- certificates of stock may be issued after foreclosure in certain cases, 44.

FOREIGN CORPORATIONS—

- defined, 109, 356.
- certificate of authority of, 113.
 - certificate of Secretary of State, 113.
 - no action maintainable unless certificates procured, 113–114.
 - proof of incorporation to be filed, 114.
 - designation of person upon whom process may be served, 114.
 - revocation of authority, 114.
 - service of process thereupon, 114.
- acquisition of real property in this state by certain, 114–115.
- the same; upon judicial sales, 115.
- exhibition of books by transfer agent of, 138 m.
- acquiring stock in, to purchase fuel, 4.
- use of stoves on passenger cars by, 31, 364.

FOREIGN CORPORATIONS—Continued.

- consolidation of with domestic corporations, 36.
- purchase of consolidated road, partly in this state by, 41.
 - receivers of such roads, 41.
 - books of; when evidence, 346.
 - when copy thereof is evidence, 346.
 - how copy to be verified, 346.
- acting for those not authorized to do business in this state, 367.
- when may sue, 321.
- when may be sued, 321.
- service of summons on, 339.
- attachment of unpaid subscription to, 343.
- taxation of, 284-288.

FOREIGN COUNTRIES—

- railroads, etc., may be constructed in, 15.
 - cable roads in with consent of patentees, 15.
 - rights, duties and liabilities of, 15.
 - location of principal office of, 16.
 - consent of directors and stockholders necessary to sell, 16.

FOREST LANDS—

- prevention of fires in, 246.
- sales and exchanges of, 250.
- not to be leased or taken, 250.
- separate parcels may be sold, 251.
- consents required, 251.
- exchanges of; procedure, 251.
- appraisers, appointment and duties, 251.
- compensation of appraisers, 251.
- report of sales or exchanges, 251.
- proceeds of sales or exchanges; how disposed of, 251-252.
- railroads to burn all inflammable material in, 246, 469.
- locomotives to be provided with spark arresters, 246, 469.
- ashes or fire not to be dumped near, 246, 469, 470.
- employees, etc., to report fires in, 246.
- companies to provide men to extinguish fires in, 246, 470.
- penalty for default, 247, 470.

FORFEITURE OF FRANCHISES—

- for failure to construct and finish road, 5.
- of street railroads, 56.
 - upon failure to complete part of line, 63.

FORFEITURE OF FRANCHISES—Continued.

for failure to designate person on whom summons may be served, 114.

upon failure to pay taxes, 285.

FORGERY —

defined, 379.

indorsement of instrument, 379.

certificate of stock or bond, 379.

indorsement transferring certificate, 380.

false certificate to certain instruments, 380.

in second degree, 380.

seal of corporations, 380.

entry on account book, 380.

other obligations, 380.

other cases in second degree, 381.

the same, in third degree, 381.

falsifies books, 381.

letter or telegram, etc., 381.

uttering letter, etc., 381.

altering books, etc., to commit fraud, 382.

makes false entry in books of accounts, 382.

omits to make proper entry in book, 382.

falsely indicating person as corporate officer, 383.

fraudulent issue of stock, 382.

forging passage tickets, 382.

“forge,” “forging,” 383.

uttering, etc., forged instruments is, 383.

uttering writing signed with wrongdoer's name, 383.

FRANCHISE —

how taxed, etc., 284.

FREE PASSES —

act prohibiting repealed, 261.

FREIGHT — See **CARRIERS**.

power of railroads to transport, 5, 174.

erection of stations, 5.

time and manner of transportation of; rates, 5.

interchange of between railroads, 10–11, 22.

rates, 10–11.

accommodation of connecting roads, 22.

railroad commissioners may prescribe regulations for exchange of, 22.

FREIGHT—See CARRIERS—Continued.

- accommodations must be furnished for, 21–22.
- no preferences to be allowed, 22.
- must be received for connecting steamboat, 29.
 - forwarding, 29.
 - tariff rates therefor, 29.
- rates on rapid transit railroads, 174.
- to be exchanged in same cars in which billed for transportation, 271.
- cars offered by one company to another to be taken in the usual manner, 271.
- no additional charge to be made, 272.
- penalty for violation of act, 272.
- unclaimed, 27.
- may be sold, 27.
- notice of sale, 27.
- sale of perishable forthwith, 27.
- disposition of proceeds, 27–28.
- recommendations of railroad commissioners respecting, 78i.
- information to be furnished railroad commissioners respecting, 78i.
- transportation of game and fish, 269–270, 468–469.
- issuing fictitious bills of lading, receipts or vouchers of, 374.
- selling, pledging, etc., property received for transportation, 375.
- use of words, “not negotiable,” on receipts, 375–376.
- offering explosives for shipment. 393.

FRAUDS—

- in organization of corporations, 366, 367.
- issue of stock, script, etc., 366.
- in keeping accounts, 368.
- insolvencies; when deemed fraudulent, 369.
- directors participating in such, 369.
- fraudulent issue of stock, script, etc., 366.
- in procuring organization, corporation, etc, 367.
- acting for foreign corporations not authorized to do business in this state, 367.
- in keeping accounts, 368.
- insolvencies of corporations, when deemed fraudulent, 369.
- unlawful discount of bills of foreign banks, 369.
- falsely indicating person as corporate officer, 370.

FRAUDS—Continued.

fraudulent conveyances, 373.

GAME—

restrictions as to transportation of venison or deer, 269.

the same; as to game birds, 269–270.

transportation of, 468–469.,

woodcock and grouse, when not to be transported, 469.

certain fish not to be transported, 469.

GAS METER—

interference with, 389.

GAS PIPES—

interfering with by constructing road, 14.

GAS—TAR—

throwing into public waters, etc., 393.

GATES—

court may order at highway crossings, 21.

cars to be equipped with on elevated roads, 78c.

GOVERNOR—

may appoint or suspend railroad commissioners, 78d–78e.

may request railroad commissioners to take evidence regarding proper change in law, 78g–78h.

to appoint expert in case of diseases of animals, 267.

may direct attorney-general to bring action of forfeiture against corporation for failure to pay tax, etc, 285.

GRADE—

change of, 11.

not applicable to Buffalo, 11–12.

where railroads cross canals, 12.

GRADE CROSSINGS—

locomotives must stop at, 23.

to proceed only upon signal, 23.

expense of watchman, how appointed, 23.

railroad commissioners may regulate precedence of trains, 23

may consent to omission of stops at, 23.

interlocking switch and signal apparatus, 23.

stop not required at depot yards or approaches thereto, 23.

penalty for neglect, 23.

cars, locomotives, etc., not to stop at, 23.

penalty, 23.

nor to deliver freight or passengers at, 23.

proceedings in case of controversy, 461.

appointment of commissioners, 461.

GRADE CROSSINGS—Continued.

- crossing not allowed in certain cases, 462.
- rapid transit roads not to cross other roads at grade, 172.

GUAGE—

- change of, 237.
- consent of railroad commissioners, 237.
- consent of stockholders, 237.
- issue of bonds, 237.

GUARANTY—

- street surface railroads may guarantee bonds of another company, 60.

GUARDIAN—

- when liable as stockholder, 138n.

GUARD POSTS—See **APPLIANCES**.

- requirements regarding, 364.
- in prolongation of bridge trusses, 30.

GUNPOWDER—

- keeping improperly, etc., 393.

HAND-CARS —

- running without authority, 388.

HEALTH —

- burial and burial permits, 471, 472.

HEALTH OFFICER —

- giving information, or permitting person to land before visit of, 387.
- landing from vessel before visit of, 387.
- going on board vessel at quarantine, without leave, 387.
- obstructing in performance of duty, 387.

HIGHWAYS — See **STREETS**.

- when railroads may be constructed across, 250.
- intersection of by railroads, 4.
 - additional lands for, 8, 10.
- must be restored to original condition, 10, 250.
- may be carried over railroad tracks, 10.
- may be constructed on new line; condemnation of lands therefor, 10.
- lands condemned become part of highway, 10.
- sign boards and flagmen at, 21.
 - requirements of, 21.
 - court may order flagmen to be stationed at, 21.
 - or that gates be provided at, 21.
 - regulation of speed at, where gates erected, 21.

HIGHWAYS—See STREETS—Continued.

- obstruction of, 364.
- signals at, 363-364.
- consent of property owners and authorities to laying private railroad across, 16-17.
- determination of commissioners in lieu of consents, 17.
 - damages therefor, 17.
 - not to interfere with travel, 17.
- electric light and power companies not to construct railroad on line of, 17.
- laying out and constructing across railroads, 249.
 - regulation of such crossing; notice, 249.
 - to be located at most convenient place, 249.
 - duty of corporations to make excavations, etc., 249.
 - penalty for neglect or refusal, 249-250.
- improvement and maintainance in certain counties, as city roads, 409.

HOLIDAYS—

- defined, etc., 356, and n.

HOMICIDE—

- unauthorized pressure of steam, 394.
- generation of unsafe amount of steam, 394.
- mismanagement of steam boilers, 394.
- negligent use of machinery, 394.
- killing by overloading passenger vessel, 394.
- liability of persons in charge of steamboats, 395.
- liability of persons in charge of steam engines, 395.

HORSE RAILROAD—See STREET SURFACE RAILROADS.

- street railroads may be operated by horse power, 58.

HOURS OF SERVICE ON RAILROADS—

- limit of working hours, 468.
- the same; exceptions, 468.
- penalty for neglect, 468.

IMMIGRANTS —

- rates of to, and second class passengers, 255.
- annual reports of such rates, 255.
- tickets; how indorsed, 256.
- rates to, 257.
- to be furnished with seats, 257.
- penalty for violation of provisions respecting, 257.
- proceedings on arrest of an offender, 258.

IMMIGRANTS—Continued.

- proceedings upon violation of provisions regarding, 259.
- sale in New York; how regulated, 258.
- penalties for violation of provisions, 260.
- restrictions against soliciting of as passengers before landing, 260.
- sale of tickets to at excessive rates; how punished, 261.
- provision regarding passengers from other countries, 261n.

INCORPORATION —

- of railroads, 1–3.
- articles of must be incorporated, 35.
- certificate of railroad commissioners, 35.
 - court may intercede if certificate refused, 35–36.
- filing of certificate, 36.
 - when surveys may be made, 36.
- act not applicable to street railroads, 36.
- filing and recording certificates of, 110.
- frauds in organization, 366–367.
- tax on organization, 295–296.
 - must be paid before certificate issued, 295–296.
- of rapid transit roads, 164.
- when act of must be pleaded, 207.

INCORPORATORS —

- qualifications of, 109.

INDIANS —

- railroads may cross lands of, 9.
 - contract with therefor, 9.
 - confirmation of county court, 9.
- provisions of rapid transit act not to interfere with act concerning lands of, 171.

INDICTMENT—

- of a corporation, 404–405.
 - plea of guilty, how put in, 403.
 - fine on conviction, how collected, 406.
 - for failure to light and ventilate tunnels, 244.

INJUNCTION —

- temporary, 325.
- staying actions by creditors against corporations, 330.
- requisites of, against corporations in certain cases, 332.
- id.; of order appointing receiver in certain cases, 332.
- id.; of judicial suspension or removal of an officer, 333.

INJUNCTION—Continued.

- application of three preceding sections, 333.
- service of upon corporation, 342.
- against receiver of corporations dissolved by legislature, 307.
- penalty for concealing notice of, 315.
- against railroads, *Notes*, 186.

INNKEEPERS—

- refusing to receive guests, 399.

INSOLVENCY—See VOLUNTARY DISSOLUTION OF CORPORATIONS.

- transfers made after default in payment prohibited, 138j.
 - to officers, directors or stockholders, 138j.
- transfers in contemplation of insolvency, void, 138j.
- persons receiving property accountable therefor, 138j.
- under banking law, must be authorized by directors, 138j-138k.
 - exceptions to certain paper, 138k.
- conveyance in hands of *bona fide* purchaser without notice, 138j.
- penalty, 138k.

INTERSECTION OF RAILROADS—

- railroads must permit intersections, etc., 10.
- in case of disagreement, commissioners to be appointed, 10.
- intersecting roads to receive and forward freight at local rates, 11.

INVOICE—

- destroying, punishment therefor, 376.

JOINT STOCK COMPANIES—

- taxation of, 284-289.

JUDGMENT—

- payment by municipal corporations, 234e.
- against corporation, property to be distributed, 327.
- id.; stock subscription to be recovered, 327.
- id.; as to liabilities of directors and stockholders, 327.
- limitation upon provision, 327.
- when enforceable only against attached property, 344.
- by default against foreign corporation, how taken, 347.
- creditors action, 349.
- against corporation failing to light tunnels, 244-245.

KINGS COUNTY—

exemption of liability to extend routes does not permit abandonment of route in, 45.

LARCENY—

bringing stolen goods into state, 384-385.

LEASES AND CONTRACTS—

lessee must maintain fences and cattle-guards, 19-20.

lease of railroads, 43-45.

exchange or guaranty of stock and bonds, 42.

execution of contract therefor, 42.

approval of stockholders, 42.

meeting therefor; notice of, how served, 42.

endorsement of certificate, 42.

filing of duplicate, 42.

road not to be used in any manner inconsistent with law applicable to lessee, 42.

execution and proof of contract, 42-43.

proviso, 43.

lessees of railroad may acquire stock therein, 43.

exchange of stock, 43.

conditions of, 43.

directors of lessee may become directors of leased road, 43.

upon surrender of stock, certificate to be filed, 43.

rights of leased road vests in lessor, 43.

rights of non-assenting stockholders and creditors protected, 43.

lease of parallel lines prohibited, unless railroad commissioners consent, 43-44.

contracting street railroads to carry for one fare, 61.

contracts for to be furnished railroad commissioners, 78.

taxation of railroads leased to foreign corporations, 295.

LEASE OF RAILROADS—

how effected, 452.

exchange or guaranty of stock of, 452.

notice of meeting therefor; how served, 453.

LEGISLATURE—See CONSTITUTIONAL LAW.

may reduce fare, with certain restrictions, 25.

corporations dissolved by, effect of as to consents for construction of street surface railroads, 61.

request of, to railroad commissioners to examine laws, 78g.

corporations dissolved by, 302, *et seq.*

LETTER—

opening or publishing, 401.

LIABILITY—

of corporation to employees of contractor, 19.

action for damages may be brought against company by laborer, 19.

notice to be served, 19.

for damage to stock by failure to build fences, 20.

of parlor car companies, 25.

as common carriers, 29.

several corporations, 30.

of reorganized railroad corporations, 44.

need not extend road if railroad commissioners approve, 44.

exception in case of Kings county, 45.

LIENS—See MECHANIC'S LIENS.

on railways; penalties, *Notes*, 105.

LIQUORS—

sale of by common carriers, 470.

licenses by comptroller to, 470.

duration of; conditions annexed, 470.

penalty for violation of act, 470.

LOCATION OF ROUTE—See ROUTE.

maps of route to be filed, before constructing road, etc., 6

notice to occupants of filing map, etc., 6.

occupant or owner may apply for change of location, 6.

petition therefor, what to contain, 6.

commissioners to be appointed, 6.

concurrence of commissioner who is a civil engineer, 6.

not changed where land damage or length of line increased, etc., 6.

determination of commissioners, how made and filed, 6.

appeal to general term from commissioners decision, 6.

compensation of commissioners, how paid, when refunded, 7.

proceedings not to be commenced, until expiration of fifteen days from service of notice, 7.

corporation to transmit to railroad commissioners, maps, etc.; requisities thereof, 7.

where route changed map also must be filed, 7.

LOCATION OF ROAD—

construction of part of line in another state, 12.

LOCATION OF ROAD—Continued.

two corporations having same location may construct line in common, 12.

LOCK—

injury to, 391.

LOCOMOTIVES—See CARS AND ENGINES.

to be provided with spark arresters, 246, 469.

coals or ashes from not to be deposited near woodlands, 246, 469.

[must stop at grade crossings, 23.

not to obstruct highways, etc., 364.

automatic couplers on, 245, 364–365.

riding on, 365.

to be equipped with driving-wheel brakes, 462.

negligent use or mismanagement of, 394.

liability of persons in charge of, 395.

MACHINERY—

power to erect and maintain, 4.

negligent use of, 394.

MAILS—

railroads must carry mails, 33.

and furnish fast mail train, if required, 33, 173–174.

in case of dispute, rates to be fixed by railroad commissioners, 33, 173–174.

penalty for refusal, 33.

MAIN—

injury to, 391.

MANDAMUS—

to compel erection of crossings, etc., 20.

to compel connecting roads to comply with regulations of railroad commissioners, 22.

to compel corporations to comply with recommendations of railroad commissioners, 78j.

to compel lighting and ventilation of tunnels, 244.

against railroad, *Notes*, 105.

MANSLAUGHTER—

by negligent use of machinery, 394.

killing by overloading vessel, 394.

negligent use of steamboats, 395.

negligent use of steam engines, 395.

MAPS—

- to be filed when railroad constructed near or over canal, 252.
- exhibiting characteristics of road, to be transmitted to railroad commissioners, 7.
- on location of route, to be filed, 6.

MECHANICS LIEN—See LIENS.

- for labor upon track, or rolling stock, etc., 275, *et seq.*
 - upon bridges, trestle work, 277.
 - filing of, 277.
- lien upon track and appurtenances, 275.
 - notice to be filed, 275.
 - evidence on trial, 276.
 - action to enforce lien, 276.
 - lien to continue one year, 276.
 - priority of liens, 276.
 - how discharged, 276–277.
 - personal liability of stockholders, 277.
- laws applicable to railroad bridges and trestle work, 277–278.
 - Notes upon, 105.

MILK CANS—

- superintendents to seize, 264.
- further provisions regarding, 264–265.

MISDEMEANORS—

- intoxication or misconduct of railroad or steamboat employees, 363.
- employing engineers unable to read, 362.
- unlawful offers to railroad commissioners or their employees, 362.
- misconduct of railroad commissioners or their employees, 362.
- misconduct of officials or employees on elevated railroad, 363.
- engineer failing to sound whistle or ring bell, 363.
- obstructing highways or farm crossings, 363.
- placing other cars before passenger cars, 364.
- using stoves or furnaces in cars, 364.
- failure to erect suitable platforms on cars, 364.
- failure to provide guard-posts or automatic couplers, 364.
- violation of duty by officers, agents or employees, 365.
- advising persons to leave service, 365.
- wrongfully wears uniform, 365.
- riding on freight cars, 365.
- frauds in organization of stock corporations, 366.

MISDEMEANORS—Continued.

- acting for foreign corporations not authorized to do business in this state, 367.
- misconduct of directors of stock corporations, 367-378.
- misconduct of directors of monied corporations, 368-369.
- misconduct of officers and directors of stock corporations, 371.
- misconduct of officers and employees of stock corporations, 371.
- misconduct of officers and agents of pipe-line corporations, 372.
- misconduct at corporate elections, 372.
- officer of corporation publishing false reports of its condition, 369.
- directors participating in fraudulent insolvency, 369.
- unlawful discount of bills of foreign banks, 396.
- violation of duty of directors of monied corporations, 370.
- officer of corporation selling shares, 370.
- fraudulent conveyances, 373-374.
- issuing fictitious certificates by pipe-line corporation, 374.
- issuing fictitious bills of lading, receipts and vouchers, 374.
- destroying invoice, 376.
- sales of passenger tickets at excessive rates, 378.
- offenses against trade-marks, 384.
- master of vessel bringing foreign convict, 384.
- keeping wrecked goods, 384.
- overloading passenger vessel, 385.
- defacing marks upon wrecked property, 385.
- officers unlawfully detaining wrecked property, 385.
- maintaining ferries, etc., 385.
- violating recognizance to keep ferry, 385.
- fires and lights on vessels in certain counties, 386.
- obstructing health officer in the performance of his duties, 387.
- unlicensed piloting, 388.
- exposing person affected with contagious disease in public place, 388.
- unlawful interference with gas meter or steam valves, 389-391.
- injuring pier, sea-wall, dock, rock, buoy, pipe, main, sewer, telegraph, 391-393.
- violation of civil or public rights, 399.
- throwing gas-tar, etc., into public waters, 393.

MISDEMEANORS—Continued.

- unauthorized pressure of steam, 394.
- generation of unsafe amount of steam, 394.
- mismanagement of steam boilers, 394.
- transporting animals for more than twenty-four hours, 397.
- overdriving animal and failure to feed, 398.
- inkeepers or carriers refusing to receive guests and passengers, 399.
- disorderly conduct in public conveyances, 399.
- coercion by employees, 400.
- employing children, 400.
- intimidation of voters, 402.
- furnishing libellous information, 402.
- exhibiting false lights, or altering signals, 386.
- misconduct of directors of stock corporations, 367–368.
 - making dividends, 367.
 - withdrawing capital stock, 367.
 - discounting paper, etc., 367.
 - misapplying funds, 368.
 - receiving shares in payment of debt, 368.
 - exchanging shares for notes, stock, etc., 368.
 - receiving property of corporation, 371.
 - false entry in books, 371.
 - false statement of affairs, 371.
 - refuses inspection of books, 372.
 - conceals notice for injunction or receiver, 372.
 - neglects to make statement as officer, 372.
- misconduct of directors of monied corporations, 368.
 - participating in fraudulent insolvency, 368–369.
 - willful omission of duty, 368–369.
- misconduct of officers and directors of stock corporations, 371.
 - increase of capital stock, 371.
 - selling, etc., shares of corporation, 371.
- misconduct of officers and agents of pipe-line corporations, 372.
 - neglect to transport goods, 372.
 - improper charges, 372.
 - unlawful rebate or allowances.

MISNOMER—

- when waived, 320.
- not available in actions against stockholders, 333.

MISCELLANEOUS—

Notes on railways, 106.

MORTGAGES—See BONDS.

- power of corporations to borrow money and issue bonds, 5, 133.
- upon consolidation, 39.
- of real or personal property need not be filed as chattel mortgages, 237.
- not to exceed amount of capital stock paid up, etc., 133.
- consent of stockholders owning two-thirds of stock, 134.
 - consent, how given, 134.
 - filing certificate of, 134.
- holders of debt secured by, may convert principal into stock of corporation, 134.
 - increase of stock to equal mortgag^e for purpose of conversion, 134.
- payment by stockholders of mortgage debt pending foreclosure, 138k.
 - effect of such payment, 138k.
- upon property in foreign countries, 16.
- on consolidated line, 38-42.
 - approval of stockholders, 39.
 - bondholders not to be compelled to accept payment before due, 39.
- creditors rights not to be impaired, 40.
- foreclosure of mortgages made by consolidated railroads partly in the state, 40-41.
 - confirmation of decree of, by supreme court, 41.
 - sale operates to pass title to part of line lying in this state, etc., 41.
 - confirmation, how effected, 41.
 - liens protected, 41.
- powers of receiver appointed in another state, 41.
- railroad corporation of another state may take and exercise rights, etc., of the mortgagor, 41.
 - and enjoy such rights as may be conferred by laws of this state, 41.
 - duties and liabilities of such corporations, 41-42.
 - provided, exemplified copy of certificate of incorporation and decree of foreclosure be filed, etc., in this state, 42.
- mortgagee may purchase at foreclosure sale, 44.

MORTGAGES—See BONDS—Continued.

certificate of stock may be issued after foreclosure in certain cases, 44.

effect of such certificates, 44.

of corporate property, *Notes*, 147.

power of company to mortgage franchise, *Notes*, 185.

MOTIVE POWER—

change of, by street railroads, 58.

MUNICIPAL AID BONDS—

issue of forbidden, 222.

payment of to county treasurer, 234a, 234b.

treasurer to purchase and cancel bonds, 234a.

if not purchasable at or below par, money to be invested in U. S., etc., bonds as a sinking fund, 234a.

if county treasurer neglect to proceed, taxpayers may apply for an order compelling him to act, 234a.

bond of county treasurer, 234a.

report of railroad sinking fund, 234a.

railroad commissioners in towns, 234b.

office may be abolished, 234a.

transfer of duties to supervisors, etc., 234a-234b.

county judge may appoint commissioners, 234b.

tenure of office, 234b.

compensation, 234b.

quorum of, 234b.

oath and undertaking of, 234b.

exchange or sale of railroad stock and bonds, 234b.

sale of, at par, or below par, 234c.

application of moneys received therefor, 234c.

application of act, 234c.

annual report of commissioners, 234c.

collection of money to pay bonds, 234c.

payment and cancellation of bonds, 234c.

accounts and loans by commissioners, 234d.

loans and investments, how made, 234c.

earnings and interest on loans, etc., to be accounted for, 234d.

reissue of lost or destroyed bonds, 234d.

proof of loss, and indemnity to be furnished, 234d.

what to be stated in reissue of bonds, 234d-234e.

MUNICIPAL CORPORATIONS—

- consent of, to plan of re-organization, 137.
- consent of, to change of route in cities, etc., 11.
- consent of, to erect tunnel railroads, 13-14.
- private railroads not permitted in, 16.
- when not to limit speed of train by ordinance, 21.
- consent of, to plan of consolidation, 40.
- consent of, to construction and operation of street railroads, 46.
 - how procured, 46-47.
 - condition upon which consent given, 47-50.
 - proceedings if property owners do not consent, 54.
- percentages of gross receipts to be paid to, by street railroad companies, 55.
- approval of, application for railway commissioners, elevated railroads, 65.
- consent of, to construction of elevated railroads, 66-68.
 - compensation therefor, 68-70.
- payment of judgments against, 234e.

NAME OF CORPORATION—

- proceedings to change name of, 443, 206.
 - petition therefor, 443-444.
 - banking corporation, 444.
 - insurance corporation, 444.
 - certificate of secretary of state, 444.
- contents of petition, 444.
 - must be verified, 444.
 - approved by directors, when, 444.
- notice of presentation of petition, how given, 444-445.
- order thereupon, 445.
 - entry of order, 445.
 - certified copy to be filed, 445.
 - publication of, 446.
- when change to take effect, 446.
- substitution of new name in pending action or proceeding, 446.
- reports by clerks to state officers, 446-447.
- of same name prohibited, 110.
 - exception in case of re-incorporated, re-organized or consolidated corporations, 110.
 - to be inserted in certificate of incorporation, 2.
- name, right to protection of, *Notes*, 142.

NARROW-GUAGE RAILROADS—

- capital stock of, 2.
- weight of rail on, 19.
- change of, 237.

NAVIGATION—

- interfering with, 384.

NAVIGABLE STREAMS—

- bridges, etc., not to be constructed across, without consent of authorities, 9.
- interfering with, 384.
- duty of corporation to restore when diverted, 10.

NEGLIGENCE—

- in use of machinery, is manslaughter, 394.
- in use of steam boiler, is manslaughter, 395.
- failure to give signals at crossings, 363-364.
- of elevated railroads, *Notes*, 187.
- by railway companies, *Notes*, 95.
- contributory negligence, *Notes*, 95.

NEW YORK CITY—

- when railroads may be constructed in streets of, 210.
- elevated road forbidden in certain streets of, 210.
- not permitted in parts of Broadway, Fifth and Fourth avenues, and parks, 211.
- improvement of railroad structures in, 211.
- railway companies in, must provide hose bridges, 217.
- processions not to interfere with railway travel in, 217.
- railways in streets and avenues of, 218.
- street surface railroad not to be constructed in, under rapid transit act, 178.
- rate of fare in, 24.
- extension of time to complete street railroads in, 58.
- duration of certain consents in, 457.
- extension of time for completing street railroads in, 459.
- sale of immigrant tickets in, 258.
- restrictions against soliciting immigrant passengers in, 260.
- approval of appliances for lighting tunnels, 245.

NEW YORK CENTRAL RAILROAD—

- fares on, 24.
- may collect extra fares on trains, 261n.
- office hours for sale of tickets on, 261n.

NIAGARA FALLS POWER COMPANY—

right to enter upon lands under streets, highways, railroads, etc., 408.

OFFICERS—See, also, DIRECTORS.

authority to appoint, 112, 138b, 207, 165–166.

by-laws regulating election of to be published, 112.

security of, 138b.

policy holders of insurance company eligible as, 138b.

salaries of, 112.

liability of, for false certificates, reports, etc., 138d.

liability exists although report made directly or indirectly, 138e.

limitation of actions therefor, 138e.

misconduct of, on elevated railroads, 363.

violation of duty as, 365.

to wear uniforms, 365.

publishing false report of corporation, 369.

of corporation, selling, etc., shares, when a misdemeanor, 370.

conversion by trustees, larceny; how punished, 370.

misconduct of, stock corporations, 371.

misconduct of, pipe-line corporations, 372.

sale of certificates by, 382.

neglect to make proper entries in books, 138c.–138d.

unlawful transfers by, in contemplation of insolvency, 138j.–138k.

frauds in keeping accounts, 338.

fraudulent issue, etc., of stock, 366–367.

frauds in procuring organization, etc., of corporation, 367.

frauds in making dividends, withdrawing stock, discounting paper, 367–368.

misappropriation of property or unlawful exchange of stock, etc., 368.

forgery of certificate of stock, 379.

fraudulent increase of stock, 371.

not to sell or be interested in sale of stock, 371.

unlawful possession of property by, 371.

improper entries in books, 371.

refusal to allow inspection of books, 372.

omission to disclose notice for injunction or receiver, 372.

OFFICERS—See, also, **DIRECTORS**—Continued.

statement by Comptroller for assessing tax upon capital, 284.

statement to assessors, 396e.

report of to Comptroller for purposes of taxation, 284.

report of to Comptroller of gross earnings, etc., of corporation, 388.

unlawfully detaining wrecked property, 385.

OILS—

regulations concerning, 266.

penalty; how collected, 266.

ORDINANCES—

when municipal corporation not to limit speed of trains, 21.

rate of speed on surface railroads, 57.

removal of snow and ice, 57.

penalty for neglect, 57.

PARKS—

when street railroad may be constructed over, 63.

not to be used by rapid transit railroads, 173, 274.

provision as to street railroads along, 454.

exceptions regarding tunnel roads, 451-452.

PASSENGERS — See **CARRIERS**, **FARE**, **TICKETS**.

railroads may erect stations for, 4.

cars for to be run at regular intervals, 21.

time tables, 21.

sufficient accommodations to be furnished, 21.

at junctions and usual stopping places, 21.

no preference to be made, 22.

accommodation of connecting roads, 22.

railroads to furnish equal accommodations for, 22.

equal interchange of, 22.

tickets for continuous trip, 22.

railroad commissioners may prescribe regulations to secure equal privileges, 22.

conditions upon which facilities granted, 22.

mandamus to enforce performance of requirements, 22

rates of fare to, 23-24.

on New York Central Railroad, 24.

legislature may alter or reduce fare, 25.

limitations thereon, 25.

penalty for excessive fare, 25.

refusing to pay fare may be ejected, 25.

PASSENGERS—See CARRIERS, FARE, TICKETS—Continued.

- sleeping and parlor cars, 25-26.
- accommodations thereon 25.
- fares on, 25.
- liability to, on such cars, 25-26.
- rights and liabilities of common carriers to, 29-30.
- persons without badges not to collect fare of or interfere with,
or baggage, 26.
- injuries to, while riding on platform of cars, 32.
 - on baggage, wood or freight cars, 72.
- trains to come to full stop on elevated roads, 78b-78c.
- gates to be maintained on, 78c.
 - penalty for violation of article, 78c.
- ejection of, when unlawful, 398.
- refusal to transport, a misdemeanor, 399.
- civil rights of, 399.
- rights of, on elevated railroads, 363.
- cars offered by one company to another to be taken in the
usual manner, 271.
- no additional charge to be made, 272.
- penalty for violation of act, 272.
- ejection of from trains, *Notes*, 186.

PENAL CODE—

- punishment, how determined, 360.
- construction of forms, 361.
- unlawful offers to railroad commissioners or employees, 362.
- misconduct of railroad commissioners and employees, 362.
- persons unable to read not to be employed as engineers, 362.
- misconduct of officials or employees on elevated railroad,
363.
- intoxication or other misconduct of railroad or steamboat em-
ployees, 363.
- duties of locomotive engineers, 363.
- placing other cars before passenger cars, 364.
- guard-posts; automatic couplers, 364.
- other violations of duty by officers, agents or servants of rail-
road companies, 365.
- riding on freight trains, 365.
- frauds in organization of corporations, 366.
- fraudulent issue of stock, script, etc., 366.
- frauds in procuring organization, corporation, etc., 367.

PENAL CODE—Continued.

- acting for foreign corporations not authorized to do business in this state, 367.
- misconduct of directors of stock corporations, 367.
- frauds in keeping accounts, 368.
- misconduct by directors of monied corporations, 368.
- officer of corporation publishing false report of its condition, 369.
- insolvencies of corporations deemed fraudulent, when, 369.
- directors participating in fraudulent insolvency, how punishable, 369.
- unlawful discount of bills of foreign banks, 369.
- violation of duty of directors of monied corporations, 370.
- officer of corporation selling, etc., shares, when a misdemeanor 370.
- falsely indicating person as corporate officer, 370.
- conversion by trustee, larceny; how punished, 370.
- directors of corporation presumed to have knowledge, 371.
- misconduct of officers and directors of stock corporations, 371.
- misconduct of officers and employees of stock corporations, 371.
- misconduct of officers and agents of pipe-line corporations, 372.
- misconduct at corporate elections, 372.
- presumption of knowledge of corporate condition and business and assent thereto by directors; definitions, 373.
- fraudulent conveyances, 373.
- issuing fictitious certificates by pipe-line corporations, 374.
- issuing fictitious bills of lading, receipts and vouchers, 374.
- erroneous bills of lading or receipts, issued in good faith, excepted, 375.
- duplicate receipts must be marked "duplicate," 375.
- selling, hypothecating or pledging property received for transportation or storage, 375.
- bill of lading or receipt issued by warehousemen, must be cancelled on redelivery of property, 375.
- property demanded by process of law, 376.
- destroying invoice, 376.
- sales by authorized agents restricted, 376.
- unauthorized persons forbidden to sell certificates, receipts, etc., for the purpose of procuring tickets, 376.
- punishment for fraud on accounts, etc., 377.
- conspiracy to sell passage tickets in violation of law, 377.

PENAL CODE—Continued.

- conspirators may be indicted, though object not accomplished, 377.
- offices for unlawful sales of passage tickets are disorderly houses, 377.
- owners, pursers, etc., allowed to sell tickets, 377.
- station masters, conductors, etc., allowed to sell tickets, 378.
- what must be stated in passage tickets, 377.
- sale of tickets not filled out as required in last section a misdemeanor, 378.
- sales of passenger tickets at excessive rates, 378.
- "company" defined, 379.
- completed unissued instruments, property, 379.
- value of, how ascertained, 379.
- forgery in first degree defined, 379.
- id.; false certificate to certain instruments, 380.
- id.; in second degree, 380.
- other cases of forgery in second degree, 381.
- other cases of forgery in third degree, 381.
- the same, 382.
- forging passage tickets, 382.
- officer of corporation selling, etc., 382.
- falsely indicating person as corporate officer, 383.
- terms "forge" and "forging," 383.
- uttering, etc., forged instruments, is forgery, 383.
- uttering writing signed with wrong-doer's name, 383.
- offenses against trade-marks, 384.
- "affixing" defined, 384.
- master of vessel bringing foreign convict, 384.
- interfering with navigation, 384.
- keeping wrecked goods a misdemeanor, 384.
- bringing stolen goods into state, larceny, 384, 385.
- lights on swing bridges, 471.

PENALTIES —

- bringing stolen goods into state, 384.
- overloading passenger vessel, 385.
- fitting out vessel with intent to wreck, 385.
- defacing marks upon wrecked property, 385.
- officer unlawfully detaining wrecked property, 385.
- violates ferry laws, 385.
- unlicensed piloting, 388.

PENALTIES—Continued.

- exposing person with contagious disease, 388.
- injuring or interfering with railroad property, 388.
- injuring railroad tracks, etc., 389.
- interferes with gas metre or steam valves, 389-390.
- injuring pier, sea-wall, dock, rock, buoy, pipe, main, sewer, telegraph, 391-392.
- keeping gunpowder, 393.
- throwing gas-tar, etc., into public waters, 393.
- placing explosive near building, 393.
- transporting animals over twenty-four hours, 397.
- unauthorized pressure of steam, 394.
- generation of unsafe amount of steam, 394.
- mismanagement of steam boilers, 394.
- negligent use of machinery, 394.
- killing by overloading passenger vessel, 394.
- liability of persons in charge of steamboats, 395.
- liability of persons in charge of steam engines, 395.
- excluding guests; violation of civil rights, 399.
- disorderly conduct on public conveyances, 399.
- coercion by employees, 400.
- employing children under sixteen years, 400.
- divulging telegram, 401.
- opening or publishing sealed letter, 401.
- for concealing notices for injunction or receiver, 315.
- failure to report or extinguish fires, 470.
- violation of excise laws, 470.
- failure to pay wages weekly, 467.
- failure to equip cars properly, 462-463.
- failure to provide automatic couplers, 464.
- for overworking employees, 468.
- failure to obey subpoena, 290-291.
- violation of act regarding interchange of freight, 372.
- violation of provision regarding emigrants, 257, 260.
- neglect to light or ventilate tunnels, 244, 245.
- failure to pay employees in cash, 240.
- against officer for selling shares, 370.
- failure to comply with orders of railroad commissioners, 78g, 78i, 78j.
- engineer or corporation stopping at crossing, 23.
- for stopping cars, horses or locomotives at crossings, 23, 364.

PENALTIES—Continued.

- for excessive fare, 25.
- for refusal to check baggage, 26.
- for injury to baggage, 27.
- for refusing to furnish tickets, 28–29.
- for failure to provide switches, signals, guard-posts, couplers,
brakes, tools, water, 30–31.
- for using stoves, etc., 31–32.
- for refusing to cut Canada thistles, 32.
- for driving animals along tracks, 32.
- for refusal to carry mails, 33.
- for failure to make report, etc., 34.
- for refusal to repair streets, remove snow and ice, 57.
- street railroads refusing transfer, 61.

PIER —

- injury to, 391.

PIPE —

- injury to, 391.

PLANK-ROAD AND TURNPIKE COMPANY —

- may lay down rails, 254.

PLANK-ROADS — See HIGHWAYS, TURNPIKES.

- corporations may lay down rails, when, 254.
- damages by crossing or occupation of by railroads, 9–10.

PLATFORMS — See CARS AND ENGINES.

- riding on, 32.
- failure to construct properly, 364.
- no liability to persons upon, except, etc., 32.

POLICEMEN —

- when conductors and brakemen may be, 34.
- duties and powers of, 34.
- must wear shield, 35.
- how removed, 35.

POWERS—

- corporations to exercise only those given by statute, 111–112.
- general powers of corporations, 112.
 - to have succession ; seal, 112.
 - to acquire and dispose of property, 112.
 - to appoint officers and agents, 112.
 - to make by-laws, 112.
 - publication of, 112.
 - prohibition of banking powers, 115.

POWERS—Continued.

- limitations upon amount of property held by non-stock corporations, 112.
- acquisition of additional real property, 113.
- acquisition of property in other states, 113.
- acquisition of real property by foreign corporations, 114–115.
- the same; upon judicial sales, 115.
- of railways.
 - additional conferred, 3.
 - entry upon land for purposes of survey, 4.
 - acquisition of real property by grant, 4.
 - the same; by condemnation, 4.
 - acquisition of title to real property, 7.
 - construction of road, 4.
 - intersection of streams, highways, etc., 4.
 - intersection of other railroads, 4.
 - to erect and maintain buildings, stations, etc., 4.
 - to transport persons and property, 5.
 - to regulate time and manner of transportation, 5.
 - to acquire and dispose of real property in other states, 5.
 - to purchase lands and stock in other states to acquire fuel, etc., 5.
 - to acquire and dispose of stock in union railway station, 5.
 - to borrow money, and issue bonds and mortgages therefor, 5.
 - to locate a route, 5.
 - to acquire title to real property, 7.
 - to receive grants from commissioners of land office, 9.
 - to condemn public lands, 9.
 - to condemn land under navigable streams, 9.
 - to receive grants from county and town officers, 9.
 - may contract with Indians for land, 9.
 - not to cross Chautauqua Assembly grounds, 9.
 - nor obstruct navigable streams, 9.
 - nor construct road upon or across a street of a city without consent, 9.
 - the same; across or along highways, 9.
 - crossing stream, street, etc., must restore to former state, 10.
 - highway or turnpike may be carried over or under railroad track, 10.

POWERS—Continued.

- may change location of highway, 10.
- may condemn right to turnpike, 10.
- when corporate powers to cease, 5.
- railroads not exercise until articles of incorporation published, etc., 35.
- certificate of railroad commissioners necessary, 35.
- in case certificate refused, appeal to general term, 35-36.
- proceedings if appeal granted, 36.
- provision not applicable to street railroads, 36.
- of railroads in foreign countries, 15-16.
- of elevated railroads, 71.
- of rapid transit railroads, 171-173.

PREFERENCES—See COMBINATIONS, DISCRIMINATIONS.

- common carriers not to make in transaction of business, in cars or stations, 21-22.
- intersecting roads to furnish equal accommodations, 21-22.
- intervention of railroad commissioners, 22.
- supreme court may compel performance of requirements, 22.
- not permitted by tunnel roads, 37.
- nor against connecting steamboats lines, 28-29.

PREFERRED STOCK—See CAPITAL STOCK, STOCKHOLDERS.**PRIVATE RAILROADS—**

- individual, joint-stock association or corporation may lay down tracks, 16-17.
- except in cities, 16.
- consent of local authorities and property owners, 17.
- determination of commissioners in lieu of consents, 17.
- highways not be be obstructed by, 17.
- electric light and power companies may become railroad corporations, 17.

PROCESSIONS—

- obstruction of streets by, 217.

PROPERTY—

- defacing marks upon wrecked, 385.
- officer unlawfully detaining wrecked property, 385,
- injuries to, or interfering with property, 388.
- penalty therefor, 388-389.

PROPERTY—Continued.

selling, hypothecating or pledging property received for transportation, 375.

demanded by process of law, 376.

QUORUM—

by-laws may fix amount necessary to constitute, 112.

RAILROAD COMMISSIONERS—

consent of to discontinuance of stations, 22.

may compel connecting roads to grant equal accommodations, 22.

decision binding two years, 22.

court may enforce decision of, 22.

may determine precedence of trains at grade crossings, 23.

may permit discontinuance of stops at grade crossings, 23.

interlocking switch and signals in lieu thereof, 23.

examination by, preliminary to reduction of fares, 25.

certificate by, of organization of elevated railroads, 3.

maps to be transmitted to, 7.

preliminary map, 7.

map and profile, 7.

may permit change of motive power by street railroads, 58.

to determine compensation to bridge company for extension of line over, 60.

may permit street railroad to abandon part of route, 60.

may approve of certain safe guards, 31.

of stoves and furnaces on dining cars, 31.

may permit railroads to cease operation in winter, 33.

to determine compensation for carrying mails, in case of disagreement, 33.

may exempt reorganized railroads from duty to extend lines, 44.

approval of consolidation of parallel lines, 43-44.

may approve of increase or reduction of capital stock, 138i.

annual report of railroads to, 34.

quarterly report of, to, 34.

penalty for neglect to make correct report, 34.

may grant certificate to new railroad corporation, 35.

proceedings upon their refusal, 35-36.

appointment and term of office, 78d.

vacancies, how filled, 78e.

suspension from office, 78e.

books, 78g.

RAILROAD COMMISSIONERS—Continued.

- secretary and marshal of board.
- appointment, duties and powers of, 78e.
- additional officers; their duties, 78e–78f.
- an accountant, inspector, and extra clerical force may be appointed, 78f.
- oath of office; eligibility of officers of board, 78f.
- principal office and meetings of board, 78f.
- quorum of board, 78g.
- general powers and duties of board, 78g.
 - shall supervise and examine roads, 78g.
 - may enter cars, depots and offices, and may examine books, 78g.
 - may compel attendance of witnesses and production of books, 78g.
 - penalty for, failure to comply with orders of board, 78g.
 - may take evidence regarding proposed change of law, 78g.
 - and on request of corporation, 78h.
 - reports of railroad corporations, 78h.
 - board may prescribe form, 78h.
 - may require amendment of report, 78h.
 - investigation of accidents, 78h.
 - may investigate and report upon, 78h.
 - notice to roads, 78h.
 - railways must report accidents to board, 78h.
 - may conduct hearings in other cities and towns, 78h.
- recommendations of board, where, law has been violated, 78i.
 - provision where corporation refuses to comply with recommendation of, 78i.
 - the same; where repairs or other changes are necessary, 78i.
 - extra rolling stock, 78i.
 - rates of fare; freight or passengers, 78i.
 - board may require additional facilities, 78i.
 - notice to, and hearing of corporation, 78i.
 - roads must comply with just recommendation of board, 78j.
 - report of failure to attorney-general, 78j.
- legal effect of recommendations and action of board, 78j.
 - not to impair rights or liabilities of corporations, 78j.
 - court may enforce decision of board by *mandamus*, 78j.
 - corporations must furnish necessary information, 78j.

RAILROAD COMMISSIONERS—Continued.

- necessary information regarding traffic to be given, 78j.
- such information to be privileged, 78j.
- attendance of witnesses and their fees, 78k.
- fees to be charged and collected by board, 78k.
- annual report of board, what to contain, 78k.
- certified copies of papers filed to be evidence, 78l.
- acts prohibited, 78l.
- salaries and expenses of members and officers of board, 78m.
- total expense of board to be borne by railroads, 78m.
 - not to exceed \$50,000, 78m.
 - how apportioned, 78m.
 - tax therefor, 78m.
- to whom this article is applicable, 78n.
 - receivers, 78n.
 - drawing-room car, etc., companies, 78n.
 - corporations or railroads, 78n.
- unlawful offers to or their employees, 362.
- misconduct of and their employees, 362.
- consent of, to change of gauge, 237.
 - and to increase of bonded indebtedness therefor, 237.
- may compel lighting and ventilation of tunnels, 243-244.
- may consent to abandonment of part of elevated railroad, 209.
- may prescribe regulations for interchange of traffic, 22.
- may fix rates for carrying mails, 33.

RAILROAD COMMISSIONERS IN TOWNS—See MUNICIPAL
AID BONDS.

RAILROAD LAW, THE, 1.

RAILS—See ROADWAY.

RAILROADS IN CITIES AND COUNTIES—See ELEVATED
RAILROADS.

- certificate of incorporation, 3, 70, 78d.
- amendment of certificate of incorporation, 3.
- power to transport persons and property, 71.
- application for railway commissioners, 65.
- petition of taxpayers, 65.
- supervisors or mayor may authorize its presentation to supreme court, 65.
 - court may appoint commissioners, 65
 - oath and bond of commissioners, 65-66.

RAILROADS IN CITIES AND COUNTIES—See ELEVATED RAILROADS—Continued.

- first meeting of commissioners, 66.
- determination of necessity of railroad and route, 66.
- powers of commissioners if consents obtained, 66.
- appointment of commissioners by general term, 66.
- no railway on streets or parks, etc., occupied by railways, 66.
- certain streets in New York and Buffalo excepted, 66–67.
- adoption of plans, and terms upon which road shall be built, 67.
- commissioners to invite submission of plans for construction of roads, 67.
- meeting of commissioners, 67.
- determination of commissioners, 67.
- upon notice to local authorities, etc., may fix compensation for use of franchise, 67.
- may fix time for constructing road; rates for transportation; amount of capital stock, etc., 67.
- may select two or more routes of which local authorities may select one, 68.
- routes, plans, etc., may be changed, 68.
- appraisal of damages and deposit of money as security, 68.
- commissioners to determine damages, 68.
- may view and assess damages; hear interested parties on notice; take evidence, 68.
- corporation to deposit security for damages, 68.
- court may accept bond in lieu of money, 69.
- conditions of such bond, 69.
- franchises forfeited for failure to deposit security, 69.
- commissioners to make separate reports, 69.
- of damages to property on streets, 69.
- corporate powers vested on deposit of security, 69.
- commissioners shall prepare certificate of incorporation containing conditions, requirements, etc., 70.
- proviso for release and forfeiture, 70.
- subscription book to be opened, 70.
- proviso regarding forfeiture, 70.
- organization; on subscription being made by fifteen persons, and payment of fixed percentages, corporation may elect directors, 70.

RAILROADS IN CITIES AND COUNTIES—See ELEVATED
RAILROADS—Continued.

- commissioners to deliver certificate to directors, 71.
 - directors to make affidavit of subscription of stock, 71.
 - affidavit to be filed, 71.
 - powers thereupon conferred, 71
- powers of such corporations, 71.
 - to transport persons and property, 71.
 - to erect and maintain structures in streets, 71.
 - to make excavations and openings, 72.
 - to restore streets to original condition, 72.
 - use of streets, etc., declared public use, 72.
 - parks, squares, etc., not to be used, 72.
 - nor streets not designated, 72.
 - grade crossing not permitted, 72.
 - nor street surface railroads, 72.
- crossing of horse railroad track, 72.
 - surface road may be removed temporarily, 72.
 - interference of with traffic to be avoided, 72.
 - roadbed to be restored, 72.
 - tracks of horse railway not to be used, 72.
- where route coincides with another route, 73.
 - corporation previously formed may continue operations, 73.
 - existing roads may connect with steam railways, ferries, etc., on payment of compensation, 73.
 - compensation, how determined, 73.
 - powers of corporation on compliance with conditions, 73.
- commissioners to transfer plans, etc, 73.
 - moneys to be transfered to corporation, 73.
- commissioners to file report; confirmation thereof, 73-74.
 - must report to supreme court, 74.
 - report to specify damages, names of persons, etc., 74.
 - evidence to accompany report, 74.
 - motion to confirm report on notice to property owners, 74.
 - damages and costs to be paid before operations commenced, 74.
 - damages may be paid from moneys or securities deposited, 74.
 - sureties on bonds may be compelled to pay, 74.

RAILROADS IN CITIES AND COUNTIES—See ELEVATED
RAILROADS—Continued.

pay of commissioners, 75.

rate of payment for services and expenses, 75.

conditions upon which salary payable, 75.

pendency of legal proceedings, 75.

quorum of commissioners, 75.

removal, how effected, 75.

vacancies, how filled, 75.

terms of commissioners, 75.

abandonment or change of route, 75.

application by petition to supervisors or mayor, 76.

appointment of commissioners, 76.

supervisors or mayor may endorse application, 76.

court may appoint commissioners, 76.

oath and bond of commissioners, 76.

meeting of board, their powers, 76.

notice of hearing on application, 76-77.

determination; abandonment, conditions, 77.

re-location; map of survey, 77.

powers over abandoned route cease, 77.

time within which road to be constructed, 77.

extension of time for construction, 77.

report of determination of commissioners, 78.

what such report to contain, 78.

pendency of legal proceedings, 78.

effect of recital of conditions of forfeiture, 78.

report and map to be filed, 78.

powers thereupon conferred, 78.

consent of property owners, or decision of commissioners
when must be obtained, 78a.

corporation may complete portion not abandoned, 78a.

other terms and conditions of certificate to remain intact,
78a.

commissioners shall also determine damages, 78b.

proceedings in respect thereto, 78b.

compensation of commissioners, 78b.

no change or abandonment in certain parts of New York and
Brooklyn, 78b.

increased deposit required when securities become depreciated,
78b.

RAILROADS IN CITIES AND COUNTIES—See ELEVATED RAILROADS—Continued.

- trains to come to full stop, etc., 78b.
- time must be allowed passengers to enter and alight from trains, 78c.
- gates; cars to be equipped with on elevated roads, 78b.
- penalty for violation of this article, 78c.
- certain regulations to be printed and posted, 78c.
- extension of time to comply with this article, 78d.
- court may extend time for one year, 78d.
- incorporation effected notwithstanding defect in articles, 78d.
- abandonment of part of route, 208–209.
 - notice of, to stockholders, 208.
 - approval of stockholders, 209.
 - approval of railroad commissioners, 209.
 - certificate to be filed, 209.
- hours of labor upon, 209–210, 468.
 - limit of working hours, 468.
 - the same; exceptions, 468.
 - additional compensation, 468.
 - penalty for neglect, 468.
- payment of wages in cash, 239–240.
- employees of, to be paid weekly, 240–241, 466–467.
 - wages to be paid weekly, 466.
 - obligation extends to successors, 466.
 - penalty for neglect, 466–467.
 - duty of factory inspectors, 466–467.
 - assignment of wages, 466–467.

RAILROADS—

- may be constructed by individual, joint-stock, or other corporation, 16.
 - appointment of commissioners, 17.
 - to determine necessity, and damages, 17.
- not to interfere with street or highway, 17.
- not over 16 miles in length may cease operations in winter, 18.
- authority for passage of acts relating to, 178.
- injunctions against, *Notes*, 186.
- railroad corporations, public character of, *Notes*, 87.
- Railway mortgages, *Notes*, 88.
- Railways, obligations to restore streets, *Notes*, 101.

RAILROADS IN FOREIGN COUNTRIES—

- must conform to the laws thereof, 15.
- corporations may expend money for surveys, and for grants, 15.
- may take grants from foreign countries, 15.
- may acquire ; maintain and operate lines of railroad, telegraph and shipping, 15.
- may purchase, sell or mortgage railway or telegraph lines, 16.
- may transport persons and property, 16.
- may acquire and use necessary real estate, 16.
- must have principal office and hold annual meetings in this state, 16.

RAILWAY APPLIANCES—

- locomotives to be equipped with driving-wheel brakes, etc., 462.
- freight cars to be equipped with air brakes, 462.
- "coal-jimmes," when to be so equipped, 462.
- penalty for neglect, 462.
- when other cars not to be hauled, 462.
- report of cars to be filed, 463.
- penalty for neglect, 463.
- railroad commissioners may make exemptions, 463.
- repeal of inconsistent acts, 463.

RAILS—

- centre bearing prohibited, 63-64.

RAPID TRANSIT ACT, THE—

- commissioners, how appointed and constituted, 153.
- vacancies, how filled, 153.
- oath of ; oaths to be filed, 153.
- first meeting of board, 154.
- by-laws and rules, 154.
- record of proceedings to be kept, 154.
- quorum ; seal, 154.
- to determine necessity of railways, 154.
- general plan of construction, 154.
- location of routes, 155.
- consent of property owners, 155, 157.
- consent of local authorities, 155-156.
- determination of commissioners in lieu of consents, 155, 157.
- parks, etc., excepted, 155.

RAPID TRANSIT ACT, THE—Continued.

- lands, etc., of United States, 155.
- streets occupied by elevated railroads excepted.
 - certain streets excepted.
 - in New York, 155.
 - in Brooklyn, 155.
 - in Buffalo, 155.
 - tunnels under parks, 155–156.
 - elevated roads forbidden in certain places, 155–156.
- plans to be approved by common council, 156.
 - hearing before council, 156.
 - vote upon plans, 156.
 - approval of plans; how effected, 156–157.
 - where municipal authority is vested in other bodies than common council, 157.
- consents of property owners, 157.
 - value of property, how determined, 157.
 - application for commissioners, 157.
 - notice of such application, how published, 157.
 - court to designate newspaper, 157.
- appointment of commissioners, 158.
 - vacancies, how filled, 158.
 - evidence before commission, 158.
 - hearing, and determination, 158.
 - transmission of report, determination and evidence to court, 158.
 - confirmation of report; effect of time within which report to be made, 158.
- detailed plans, 158.
 - plans and specifications for construction of road, 158.
 - devices, etc., to secure efficiency, 158.
 - supports, turnouts, switches, buildings, etc., 158.
 - provision for subways, 158–159.
 - municipal supervision of work where subsurface structures interfered with, 159.
 - expenses of such supervision, and of restoring subways, etc., 159.
- sale of franchises at auction, 159.
 - notice of terms and conditions, 159.
 - advertisement of sale to contain certain plans and specifications, 159.

RAPID TRANSIT ACT, THE—Continued.

- commissioners to supervise construction, 159–160.
 - terms of sale to provide for construction of road, 159–160.
 - approval of engineers, 160.
 - deposit of security, 160.
 - bids void at option of board unless corporation organized, 160.
 - re-sale of franchise, 160.
- when roads to be constructed, 160.
 - extensions of time, 160.
 - forfeiture for failure to complete road, 161.
 - re-sale of franchise, 161.
 - distribution of proceeds, 161.
- re-organization of corporation, 161.
 - amount of capital, stock and bonds, 161.
 - rates for passengers and freight, 161.
 - rejection of bids; re-sale, 161.
 - re-sale of franchise, 161.
 - conditions, 161.
 - duration of franchise, 162.
 - rights of creditors protected, 162.
- re-sale of franchises on expiration of term, 162.
 - conditions; compensation to owners, 162.
 - who may purchase, 162.
- board may employ attorneys, engineers, etc., 162.
- appropriation of money, 162–163.
 - application to court therefor, 162.
 - limitation of indebtedness, 163.
 - audit and payment of expenditures, 163.
 - issue of revenue bonds, 163.
 - levy of tax therefor, 163.
- expenses; how repaid, 164.
 - terms of sale of franchises, 164.
 - compensation of commissioners, 164.
- twenty-five persons to organize corporation, 164.
 - articles of incorporation, 164.
 - statements in; to embrace plans and specifications, 164.
 - articles to be approved, acknowledged and filed, 164–165.
- stock subscription books, 165.
 - to be fifty subscribers, 165.
 - percentages to be paid in cash, 165.

RAPID TRANSIT ACT, THE—Continued.

- meeting to organize, 165.
- thirteen directors to be chosen, 165.
 - qualifications; conditions of voting, 165.
 - tenure of office, 165.
 - adoption of by-laws, 165.
 - election of directors; vacancies, 166.
 - time and place of annual meetings; manner of calling, 166.
 - number of stockholders to constitute meeting, 166.
 - officers, their election, powers and duties, 166.
 - inspectors of election; amendment of by-laws, 166.
- by-laws may provide for forfeiture of shares, 166.
- record of proceedings to be kept, 166.
 - certificate thereof, 166.
 - certificate of approval of rapid transit railroad commissioners, 166.
 - certificate, and certified copy thereof to be filed, 166.
 - payment of organization tax, 166.
 - certificate as evidence, 166.
 - payment by bank or trust company of deposits, 167.
 - payment of expenses to purchasers, 167.
- plans but not route may be changed, 167.
 - approval of rapid transit commissioners, 167.
 - approval of corporation, 167.
 - certificate of such change, 167.
 - certificate of approval of commissioners, 167.
 - filing of certificate, plans and specifications, 167.
 - effect of such change, 167.
- taxation of corporation, place of, 168, 269a, 269b.
- directors to manage affairs of corporation, 168.
 - vacancies, how filled, 168.
 - qualifications of directors, 168.
 - books to be exhibited, 168.
- directors may require payment of subscriptions in such installments as they deem proper, 168.
- liabilities of stockholders, 168.
 - to creditors and laborers, 168.
 - for personal services, 168.
 - execution against corporation, 168–169.
 - action to be preceded by notice, 169.

RAPID TRANSIT ACT, THE—Continued.

stock, how transferred, 169.

capital, 169.

how increased or reduced, 169.

approval of rapid transit commissioners, 169.

approval of stockholders, 169.

notice of meeting therefor, 169.

statement to be approved, attested and filed, 169.

executor, trustee or pledgee holding stock not liable as stockholder, 169–170.

pledgor and owners liable, 170.

liability of corporation, 170.

for debts of laborers against contractors, 170

notice to such corporation, 170.

requirements and service of such notice, 170.

limitation of actions therefor, 170.

real estate, 170–171.

corporation may hold amount necessary for construction,
etc., of railways, stations, etc., 171.

proceedings for condemnation, 171.

general powers of rapid transit corporations, 171–173.

to take and hold real and personal property, 171.

the same; necessary to construction and operation of
road, 171.

this provision not to affect act relating to Indian lands,
171.

to cross and unite with other roads, 171.

turnouts, sidings, switches, etc., 271.

corporations to unite in making connections, etc., 171.

compensation therefor, 171.

commissioners to be appointed by court, 171–172.

to transmit persons and property by motor other than animal
power, 172.

to construct and operate railroads in and underneath streets,
172.

may excavate to secure foundations, etc., 172.

not to cross other railroads at grade, 172.

not to place piers, etc., upon existing railway tracks, 172.

corporation must restore streets, 172.

use of streets, etc., declared public, 172–173.

use of parks or squares limited, 173.

RAPID TRANSIT ACT, THE—Continued.

- to borrow money, and issue bonds therefor, 173.
- employees must wear badges, 173.
 - not to collect fare, or interfere with passenger or baggage, otherwise, 173.
- corporation must carry mails, 173.
 - compensation therefor, 173.
 - must furnish extra, or fast mail train, 173.
 - compensation therefor, 173–174.
- ejection of passenger refusing to pay fare, 174.
- trains to be run on schedule time, 174.
 - transportation of passengers and freight, 174.
 - to be taken and discharged at reasonable times and at legal rates, 174.
 - liability of, for damages, 174.
- intoxication of conductor or engineer a misdemeanor, 174.
- injury to property a misdemeanor, 174.
 - offenders liable for damage, 174.
- legislature may dissolve corporation, 175.
- railroads may connect with other routes and ferries, 175.
 - may extend facilities, 175.
 - consent of rapid transit commissioners, 175.
 - may lay additional tracks, 176.
 - Battery park excepted, 175.
 - board may fix location and plans of construction, 175.
 - conditions and compensation, 175.
- certificate in regard to connection, etc., 175.
 - to be delivered to corporation upon acceptance of conditions, 175.
 - execution and recording of certificate, 175–176.
 - certificate and certified copy thereof to be filed, 176.
- powers conferred in regard to extensions, 176.
- consents of authorities and property owners to be obtained before connecting routes, 176.
 - determination of commissioners in lieu of consents, 176.
 - confirmation by court, 176.
- corporations may remove surface railroads, 176–177.
 - must restore same and pay damages occasioned, 177.
 - not to use tracks of horse railway, 176.

RAPID TRANSIT ACT, THE—Continued.

construction of act, 177-178.

not to affect L. 1875, ch. 606 ; or art. 5 of ch. 565 of L. 1890, except, etc., 177.

not to affect or impair certain rights of corporations, etc., 177.

not to affect certain acts, except, etc., 177, 178.

no surface railroads to be constructed in New York city under this act, 178.

repeal of inconsistent acts, 178.

when to take effect, 178.

RAPID TRANSIT ACT—AMENDMENT OF—

bridge company may construct elevated road in lieu of approaches to bridge, 272.

proceedings in such cases, 272.

consents of authorities ; how obtained, 273-273.

consents of property owners, etc., 273.

conditions ; power of companies ; limitations, 273.

REAL PROPERTY—

power to take for railroads, 4, 171.

acquisition of, under general corporation law, in other states, 113.

in this state by foreign corporations, 114.

upon judicial sales, 115.

authority to appropriate for railroad purposes, *Notes*, 180.

extent to which may be appropriated, *Notes*, 181.

corporation is judge of amount needed, *Notes*, 181.

appropriated for one public use cannot be diverted for a different public use, *Notes*, 182.

estate in acquired by railroads, *Notes*, 182.

duration of easement in, *Notes*, 182.

proceedings to condemn, *Notes*, 183.

determination of commissioners, *Notes*, 184.

appraisement of damages, *Notes*, 184,

commissioners report ; confirmation, *Notes*, 184.

powers of court ; appeal, *Notes*, 184.

setting aside appraisal of commissioners, *Notes*, 185.

measure of damages for appropriating, *Notes*, 187.

taken for public use ; damages therefor, *Notes*, 92.

powers of commissioners regarding, *Notes*, 92.

acquisition of real by corporations, 113.

RECEIVERS—

- possession of, 136.
- suit against, 136.
- condemnation of lands, when in possession of, 8.
- of railroad partly in another state, may perform duties in this state, 41.
- provisions relating to railroad commissioners applicable to, 78n.
- taxation of real estate in hands of, 296k.
- unpaid subscriptions to stock to be paid to, 138h.
- condemnation of lands when railroad in the hands of, 8.
- of personal property, 323.
- commissions, 323, 312, 299, 306.
- may be permanent and temporary, 325.
- powers of temporary receiver, 325.
- additional powers and duties of, 326.
- to report to Attorney-General, 297.
- compelling report by, 296.
- motion by Attorney-General to remove, 298.
- who to be served upon, 299.
- application of act, 299.
- appointment and duties of, 299.
 - application for appointment of, where made, 299.
 - compensation, 299.
 - order appointing to designate place of deposit, 299.
 - duties of, 300.
 - to file report; what to contain, 300.
 - notice to Attorney-General, 300.
 - intervenor to pay legal expenses, 300.
 - no allowance to attorneys, 300.
 - to close up affairs within one year, 300.
 - Attorney-General may apply for removal of, 300.
 - appeals, 301.
 - copies of all papers to be served on Attorney-General, 301.
 - where applications under this act to be made, 301.
 - change of venue, 301, 302.
 - preference on calander, 302.
 - repeal of inconsistent acts., 302.
- transfer of property to, 302.
 - appointed on application of Attorney-General; when property to vest in, 302.

RECEIVERS—Continued.

- duty of Attorney-General, 302.
- suit, where to be brought, 302, 303.
- when court to appoint receiver, 303.
- receiver to make inventory, 303.
- notice to creditors, 303-304.
- powers and duties of, 303-304.
- creditors to present claims, 303-304.
- when creditor is debarred, 305-306.
- right of creditor to appeal, 305-306.
- sale of property, 305-306.
- allowance of receiver, 306.
- distribution of assets, 306.
- stay of proceedings in actions, 306.
- discharge of receiver; his powers until discharged, 306.
- subpoenas, by whom issued, 306.
- receiver may administer oaths, 306.
- disobedience to subpoenas; false swearing; perjury, 306.
- leave to sue receiver, how and where obtainable, 307.
- repeal of inconsistent acts, 307.
- wages of employees to have preference over other payments by receivers, 307.
- appraisal of property in hands of, 308.
- provisions of Revised Statutes applicable to, 308.
 - general powers and duties of, 308-309.
 - security of, 309.
 - rights of, 309.
 - authority of, 309.
 - to prosecute for arrears of stock, 310.
 - to give notice of appointment, etc., 310.
 - certain sales, etc., void, 310.
 - debtors to account to, 310.
 - referring controversies, 311.
 - meeting of creditors to be called, etc., 311.
 - subsisting contracts, how treated, 311-312.
 - commissions of, 312.
 - to retain certain moneys, 312.
 - id.; to meet certain suits, 312.
 - order of payment of debts, 312.

RECEIVERS—Continued.

- second and final dividend, 312–313.
- proceedings thereupon, 313.
- debts barred after second dividend, 313.
- surplus to be distributed to stockholders, 313.
- money to be retained, when, 313–314.
- control of, 314.
- account by them, 314.
- previous notice thereof, 314.
- master's duty, 314.
- settlement of account, its effect, 314.
- protection against illegal transfers, 315.
 - powers of receivers extended for protection against fraud, 315.
 - may have action against offenders, 315.
- punishment of directors for neglect of duty, 315.
 - penalty for concealing notices for injunction or receiver, 315, 316.
 - to whom this act applies, 316.
 - citations to laws concerning, 316.
- possession by of property, 136.
- suits by him, 136.
- sale or reorganization, not to disturb possession of, 136.
- when may be sued, 136.
- when new corporation liable for neglect of, 136.

REFERENCES—

- how made in actions against corporations, 346.

RE-ORGANIZATION—

- after sale of corporate property and franchises, 134.
 - certificate; filing of, 134.
 - issuing preferred and common stock after, 135.
 - contents of plan or agreement for, 135.
 - corporation may issue stock and bonds, 136.
 - may settle former accounts, 136.
 - sale of property, 136.
 - possession of receiver, 136.
 - liability of, 136.
 - suits against, 136.
 - stockholders may assent to, 136–137.
 - consent of municipal authorities, 137.
 - stock may be issued after, 44.

RE-ORGANIZATION—Continued.

- corporation not liable to extend route after, 44.
- approval of railroad commissioners, approval is conclusive, 44.
- no abandonment of any portion of route hereunder, 44.
- Kings county excepted, 45.

REPEALING ACTS—

- laws repealed by the general railroad law, 78n-80.
- by the general corporation law, 81-82 ; 124-132.
- effect of, 122-123.
- by the stock corporation law, 83-84.
- by the condemnation law, 201.
- by the statutory construction law, 138x.
- effect of, 138v-138w.

REPEAL OF CHARTER—

- constitutional provision, 205.
- notice by publication of application to alter, 205.
- amend or extend charter, 205-206.

REPORTS—

- to be made annually to railroad commissioners, 34.
- quarterly to railroad commissioners, 34.
- penalty for refusal or neglect, 34.
- reports of railroad corporations, 78h.
- railroad commissioners to prescribe form of, 78h.
- amendment of, 78h.
- false report of corporate affairs, 371.
- refusal or neglect to make, 372.

ROADWAY—

- location of, 5.
- construction of, 4.
- additional land for, 4.
- removal of trees from, 4.
- weight of rail, 19.
- Canada thistles to be cut along, 32.
- walking along track, 32.
- penalty for leading or driving animals along, 32.
- use of centre bearing rails on, 63-64.
- paving or repairing streets along, 64.
- use of sand upon street railroads, 63.
- use of salt on, 217.
- when highways may be laid across, 249-250.

ROADWAY—Continued.

- mechanics liens on bridges and trestle work along, 277-278.
- change of gauge, 237.
- inflammable materials to be removed from, 246, 469.
- injuries to track, 389.
- placing obstructions on, 389.

ROUTE—See ABANDONMENT OF ROUTE, LOCATION OF ROUTE,
EXTENSION OF ROUTE, NEW YORK CITY.

- abandonment of part of, by elevated railroads, 208-209.
 - not permitted after reorganization, 44, 45.
- corporations not liable to extend, after consolidation, when, 44.
- when may be constructed underground, 13-14.
 - tunnel railroads, 13.
 - tunnels in or under parks, 14, 155, 156.
- when highways may cross, 249.
- when may cross highways, 250.
- when constructed near or across canal, 252.
- railroads may be constructed in lieu of canal, 253.
- through forest lands, 250-252.
- prevention of fires along, 246, 469.
- across salt lands, 252.
- across lands of the United States, 252.
- across cemeteries, 270.
- across streams, highways, plank-roads, turnpikes and canals, 4.
- across other railroads, 4.
- through public lands, 9.
- through Indian lands, 9.
- through Chautauqua grounds, 9.
- approaches to, 272-274.
- in New York City, 210, 175.
 - in certain streets, 210-211, 218, 66-67, 78b, 155-156.
 - in Brooklyn, 211, 221, 78b, 67, 155.
- in Buffalo, 11, 219, 67, 155.
- rapid transit railroads, 155, 172.
 - change of, 167.
 - restoring streets along, 176, 177.
 - change of, 11-12.
- elevated railroads excepted, 11.
- to adjoining county, 11.
- consent of taxpayers, 11.
- consent of municipal authorities, 11.

ROUTE—See **ABANDONMENT OF ROUTE, LOCATION OF ROUTE, EXTENSION OF ROUTE; NEW YORK CITY.**

at canal crossings, 12, 252.

power of canal commissioners over, 252.

by directors, to avoid accidents, 11-12.

two roads having same location, 12-13.

of part of line in another state, 12.

RULES—See **POWERS.**

corporations have power to make, 112.

SAFETY APPLIANCES—See **APPLIANCES, CARS AND ENGINES, LOCOMOTIVES, GATES.**

regulation of, 30-32.

switches, warning signals, 30.

guard-posts, 30.

automatic couplers, 30, 364, 463-465, 245-246.

automatic or safety brake, 30.

railroad commissioners may approve other, 31.

may recommend as to, 78i.

stoves and furnaces prohibited, 31, 364.

upon dining cars, 31, 364.

platforms upon cars, 364.

freight cars, 462.

air brakes on, 462.

couplers, 463.

driving-wheel brakes on locomotives, 462.

"coal jimmies", use of in the future regulated, 462, 464.

injuries to, 388-389, 391.

SALE OF CORPORATE REAL PROPERTY—

proceedings on application to sell, mortgage, etc, 202.

petition to court, what to contain, 202.

averments, statements and prayer for relief, 202.

verification, 203.

hearing of application, 203.

court may grant application, 203.

appearance, 203,

notice to creditors on application of insolvent corporation, 203.

service of notices, 203-204.

power of court to make all necessary orders, 204.

title, when to take effect, 204.

SALT LANDS—

title to, how acquired, 252.

SAND—

when may be used on tracks, 63.

SCHEDULES—

acts repealed by Laws of 1890, chapter 565, 78n-80.

acts repealed by Laws of 1890, chapter 563, 81-2.

acts repealed by Laws of 1890, chapter 564, 83-84.

SCIRE FACIAS—

quo warranto, etc., abolished, 352.

actions to be brought in name of people, 352.

SEA WALL—

injury to, 391-392.

SECRETARY OF STATE—

service of process on, for foreign corporation, 114.

SEALS—

how impressed upon corporate documents, 138r.

forgery of, 380.

SEWER—

injury to, 391.

interference with in constructing railroad, 14.

SIGNALS —

at railroad crossings, 23.

at highways, See HIGHWAYS.

at roads, bridges or structures which cross railroad above tracks, 30.

on swing bridges, 471.

on swing bridges across Hudson river, 247.

altering, 386.

falsely exhibiting or obstructing, 386.

Notes on, 98.

SLEEPING AND PARLOR CARS—

railways may contract with corporations for hauling, 25.

extra fare may be collected on, 25.

liability of railroads hauling, 25.

conductors must wear badges, 26.

qualification of conductors, 26.

intoxication or misconduct of employees, 363.

violation of duty by employees, 365.

injuries to baggage, 27.

fare may be reduced, 25.

SLEEPING AND PARLOR CARS--Continued.

- penalty for excessive fare, 25.
- passenger refusing to pay fare may be ejected, 25.
- platforms on, 364.
- stoves or furnaces on, 31, 364.
- provisions regarding railroad commissioners applicable to, 78n.
- tax upon companies operating, 287, 289.
- tickets for, how endorsed, 261.

SNOW AND ICE—

- street railroads must remove, 57.

SPEED—See **MUNICIPAL CORPORATIONS AND ORDINANCES**.

- on railways, 21.
- on street railroads, 57.

STATE AID—

- to railroad corporations, forbidden, 222.

STATE LANDS—See **COMMISSIONER OF THE LAND OFFICE**
REAL ESTATE.**STATIONS**—

- corporations may erect and maintain, 4, 171.
- passengers and freight to be received at, 21.
- to furnish accommodations at, 21-22.
- accommodations for connecting steamboats at, 28.
- transfer of baggage from steamboat landing, 28.
- railroads to receive at, freight from connecting steamboats, 29.
- not to be discontinued without consent of railroad commissioners, 22.
- no preference for transacting business in, 21.
- to have same name as village where located, 22.
- central station in village to bear such name. 22.
- equal facilities to be furnished at, for connecting roads, 22.
- sale of tickets at, for connecting roads, 22.
- railroad commissioners may regulate facilities at, 22.
 - may order that additional facilities at, be furnished, 78i.
- connection of elevated railroad with, 73.
 - of other roads, 50.
- compensation for use thereof, how determined, 73.
- misconduct of station agents, 363.
- placing explosives near, 393.
- on New York Central Railroad, when to be kept open for sale of tickets, 261n.

STAY OF PROCEEDINGS—See CODE OF CIVIL PROCEDURE,
INJUNCTIONS.

- in actions collusively brought, 119.
- powers of supreme court to grant, 119.
- upon appeals, in condemnation proceedings, 198.

STATUTORY CONSTRUCTION LAW, THE—

- short title; extent of application, 138p.
- property; real property; personal property, 138q.
- person; judge, 138q.
- lunacy; idiocy, 138q.
- gender; number; tense, 138q.
- heretofore; hereafter; now, 138q.
- last; preceding; next; following, 138r.
- folio, writing; signature; seal, 138r.
- oath; affidavit; swear, 138r.
- acknowledge: acknowledgment, 138r.
- bonds; undertaking, 138s.
- choose; elect; appoint, 138s.
- meeting; quorum; power of majority, 138s.
- service of notice upon body or board, 138t.
- county clerk; register, 138t.
- village; state; territory, 138t.
- public holiday; half-holiday, 138t.
- year, 138t.
- month, 138u.
- day; mode of computing days; night-time, 138u.
- standard time, 138u.
- Civil and Criminal Codes, 138v.
- laws of England and the colony of New York, 138v.
- limiting the effect of repealing statutes, 138v.
- existing laws included in revision not to be construed as new enactments, 138v.
- effect of revision upon laws passed at same session or before revision takes effect, 138w.
- alteration of titles and head notes, 138w.
- laws repealed, 138w.
- time of taking effect, 138 w.
- schedule of laws repealed by, 138x.

STEAM—

- unauthorized pressure of, 394.
- generation of unsafe amount, 394.

STEAM BOILERS—

mismanagement of, 394.

STEAM VALVES—

interference with, 389.

STEAM ENGINES—

liability of persons in charge of, 395.

STEAMBOATS—See VESSELS, NAVIGATION.

connection of railroads with, 28.

maintenance of, by railroads in foreign countries, 15-16.

liability of persons in charge of, 395.

intoxication or misconduct of employees on, 363.

STOCK—See CAPITAL STOCK—

exchange or guaranty of, 452.

fraudulent issue of, etc., 366.

sale of by officers of corporation, 382-383.

stocks defined, *Notes*, 143.

borrower of, when empowered to use it, *Notes*, 143.

actions in relation to, *Notes*, 144.

subscription for, *Notes*, 144-145.

overissue of, *Notes*, 144.

shares of non-negotiable, *Notes*, 144.

purchaser of, takes it subject to burdens, *Notes*, 145.

increase and reduction of, *Notes*, 145.

transfer of, *Notes*, 145.

gift of; how consummated, *Notes*, 145.

subscriptions obtained by fraud, *Notes*, 145.

is trust fund for creditors, *Notes*, 145.

offer of corporation to sell below par is fraudulent, *Notes* 146.

is personal property, *Notes*, 146.

corporation need not recognize over-issue of, *Notes*, 146.

corporate lien upon, *Notes*, 148.

stock, stockholders; actions against, etc., *Notes*, 90-92.

STOCKHOLDERS—See STOCK, CAPITAL STOCK.

mortgages, except purchase money, not to be issued without consent of, etc., 134.

rights of, after reorganization, 135-136.

regulation as to voting by, 135.

may assent to plan of readjustment, 136-137.

consent to readjustment by municipal authorities as stockholders, 137.

STOCKHOLDERS—See STOCK, CAPITAL STOCK—Continued.

- directors chosen by, 137-138.
 - failure to enact by-laws to enable election of directors by, 138-138a.
- may change number of directors, 138.
- liability of directors for loans to, 138a.
 - withdrawal of money paid on stock by, 138a.
- transfers by, indebted to corporation, 138b.
- unauthorized payment of capital to, 138a.
- alteration or extension of business authorized by, 138e.
- may authorize issue of preferred and common stock, 138j.
- prohibited transfers to, 138j.
 - no transfers of property to, in contemplation of insolvency, 138j.
 - not to transfer stock in corporation in contemplation of insolvency, 138j.
- payment by of mortgage debt pending foreclosure, 138k.
 - may be protected thereby on foreclosure, 138k.
- lost certificates of stock, 138k.
 - application to court to issue new in place of, 138k-138l.
- may require financial statement of corporation, 138m.
- exhibition of books by transfer agent of foreign corporation to, 138m.
- liabilities of, 138m.
 - to creditors, 138m.
 - to employees, etc., of contractors, 138m-138n, 168-169.
 - persons holding stock as collateral upon trust, 138n.
 - executors, administrators, etc., 138n.
- limitation of liability as, 138n.
 - execution against corporation returned unsatisfied, 138n.
 - within what time action to be brought to enforce, 138n.
- consent of, to abandonment of part of route of elevated road, 209.
 - to abandonment of part of street railroad, 60.
 - to change of gauge, 237.
 - to issue stock therefor, 237.
 - to guarantee by one street railroad of bonds of another company, 60.
 - to lease, 42-43.
 - to mortgage, 39, 134.
 - to consolidation agreement, 38.

STOCKHOLDERS—See STOCK, CAPITAL STOCK—Continued.

to increase or reduce capital stock, 138h–138i.

of rapid transit corporations, 169.

approval by, of lease of road, 452.

number of to form rapid transit corporation, 165.

meeting of; rights of municipal corporations, 471.

how stocks of such corporations represented, 471.

making parties to action against corporation, 326.

when separate action may be brought against them, 326.

when may vote when personal interest involved, *Notes*, 146.

are bound by acts of a majority, *Notes*, 146.

penalties against, *Notes*, 186.

personal liability of for debts, *Notes*, 186.

stockholder; how constituted, *Notes*, 143.

defined, *Notes*, 146.

action to establish liability of, *Notes*, 144.

STOCK CORPORATION LAW, THE—

short title and application of chapter, 133.

power to borrow money and mortgage property, 133.

may raise needed funds, and issue mortgage, 133.

limitation of such power, 134.

consent of stockholders, when necessary, 134.

consent to be filed, 134.

mortgage bondholders may secure stock of corporation in lieu thereof, 134.

reorganization upon sale of corporate property and franchises, 134.

purchaser may organize a new corporation on executing certificate, 134.

certificate of reorganization to contain, 134–135.

name of new corporation, 135.

amount and character of capital stock, 135.

number and names of directors, 135.

promoters agreement, 135.

rights and privileges thereupon secured, 135.

contents of plan or agreement, 135.

purchasers of property may execute a promoter's agreement, 135.

what such agreement must contain, 136.

new corporation may issue bonds and settle debts of old corporation, 136.

STOCK CORPORATION LAW, THE--Continued.

- preferences may be established, 136.
- limit of stock and bonds, 136.
- sale of property; possession of receiver and suits against him, 136.
- court may order sale of property on default of mortgage, 136.
- sale or reorganization not to disturb possession of receiver, 136.
- when receiver may be sued, 136.
- when new corporation liable for neglect of receiver, 136.
- stockholders may assent to plan of adjustment, 136-137.
- within what time such assent may be given, 137.
- when municipal authorities may so assent, 137.
- may surrender old in lieu of new stock, 137.
- combinations in restraint of trade prohibited, 137.
- directors, 137.
- directors how chosen, and when, 138.
- vacancies how filled, 138.
- notice of time and place of election, 138.
- policy holders in insurance corporation eligible, 138.
- change of number of directors, 138.
 - how and by whom change effected, 138.
 - notice, how served; proof of service, how made, 138.
 - consents in case of banking or insurance corporations, 138.
- when acts of directors void, 138.
 - where directors hold over and neglect to provide for annual meeting, 138.
- liability of directors for making unauthorized dividends, 138a.
 - dividends not to be declared except from surplus profits, 138a.
 - capital not to be impaired, 138a.
 - directors when liable for violation of this section, 138a.
 - exception in case of dissolution, 138a.
- liability of directors for unauthorized debts and over issue of bonds, 138a.
 - debts not to exceed paid up capital stock, 138a.
 - liability of directors, 138a.
- liability of directors for loans to stockholders, 138a.
 - loans or discounts not to be made to stockholders, 138a, 138b. ¶
 - penalty for violation of provision, 128b.

STOCK CORPORATION LAW, THE—Continued.

- transfers of stock to stockholder indebted to corporation, 138b.
- officers ; how appointed ; who eligible, 138b.
 - security may be required of, 138b.
- inspectors, and their oath, 138b.
 - how appointed ; who may be, 138b.
 - compensation of ; oath to be taken, 138c.
- books to be kept, 138c.
 - account books, and record of stockholders, 138c.
 - stock books to be open for inspection, 138c.
 - transfers of stock, effect of, 138c.
 - stock book as evidence, 138c.
 - penalty for failure to make report or to exhibit stock book, 138c.
- annual report, when to be made, 138d.
 - shall contain amount of stock ; amount of debts and assets, 138d.
 - to be signed, verified and filed, 138d.
 - penalty for refusal, 138d.
 - how director may exempt himself from liability, 138d.
- liability of officers for false certificates, reports or public notices, 138d.
 - fraudulent reports, etc., render directors liable, 138d.
 - liability exists however report made, 138e.
 - limitation of actions upon such liability, 138e.
- alteration or extension of business, 138e.
 - how change or extension may be effected, 138e.
 - amendment of certificate may be authorized by stockholders, 138e.
- issue and transfer of stock, 138f.
 - certificates, how prepared, 138f.
 - shares not transferable until calls paid, 138f.
 - corporation may purchase stock or bonds of other corporations, 138f.
 - or exchange its own stocks or bonds therefor, 138f.
 - president of one corporation eligible as director in another, 138f.
 - stock corporation may guarantee bonds of a corporation, 138g.
- subscriptions to stock, 138g.

STOCK CORPORATION LAW, THE—Continued.

- books may be opened after certificates of incorporation filed, 138g.
- ten per cent. in cash to be paid, 138g.
- consideration for issue of stock and bonds, 138g.
 - only to be issued for money, labor, or property, 138g.
 - bonds not to be issued below fair market value, 138g.
- time of payment of subscriptions to stock, 138g.
 - subscriptions payable as directors may require, 138g.
 - stock may be forfeited for default in payment, 138g.
 - due notice of default to be given, 138g.
 - stock forfeited may be resold or cancelled, 138h.
 - stock not to be reduced below minimum required by law, 138h.
 - payment of subscriptions where receiver appointed, 138h.
- increase or reduction of capital stock, 138h.
 - how and to what extent may be made, 138h.
 - effect of reduction as to liabilities, 138h.
 - owner not relieved from prior liabilities, 138h.
- notice of meeting to increase or reduce capital stock, 138h.
 - how increase or reduction effected, 138h.
 - notice of meeting, 138h, 138i.
- conduct of such meeting; certificate of increase or reduction, 138i.
 - if increase or reduction authorized, certificate to be executed and filed, 138i.
 - when approval of comptroller required, 138i.
 - when of railroad commissioners, superintendent of banks or insurance, 138i.
 - excess of capital to be returned to stockholders, 138i, 138j.
- preferred and common stock, 138j.
 - how issue of such stock authorized, 138j.
 - upon what terms exchanges made, 138j.
- prohibited transfers to officers or stockholders, 138j.
 - transfers prohibited, except for cash, by insolvent corporations, 138j.
 - transfer by insolvent corporations void, 138j.
 - person receiving stock to account for it, 138j.
 - stockholders not to make transfers, etc., 138j.

STOCK CORPORATION LAW, THE—Continued.

- certain transfers must be authorized by directors, 138k.
- directors liable for violation of this provision, 138k.
- payment by stockholders of mortgage debt pending foreclosure, 138k.
- any stockholder may make good default by certain payments, 138k.
- application to court to order issue of new in place of lost certificate of stock, 138k.
 - proceedings to compel issue of new certificate, 138k.
 - application to be by petition, 138k.
 - order to show cause, how served, 138l.
 - order of court upon such application, 138l.
 - court may hear and determine matter, 138l.
 - bond to be filed by petitioner, 138l.
 - person claiming certificate may resort to indemnity 138l.
- financial statement to stockholders, 138l, 138m.
 - stockholders may require statement of corporate affairs, 138m.
 - court may extend time for delivering statement, 138m.
 - penalty for refusal.
- exhibition of books by transfer agent of foreign corporation, 138m.
 - transfer book and list of stockholders to be furnished, 138m.
- liabilities of stockholders, 138m.
 - stockholders liable until capital stock fully paid, 138m.
 - liability to employees, 138n.
 - how such liability enforced, 138n.
 - trustees not liable as stockholders, 138n.
 - pledgers or trust estates liable as stockholders, 138n.
- limitation of stockholders liability, 138n.
 - liability accrues only after execution against corporation returned unsatisfied, 138n.
 - when liability may be enforced, 138n.

STOVES AND FURNACES—

- not allowed on roads exceeding fifty miles in length, 31, 364.
- nor in dining cars, except with approval of railroad commissioners, 31.
- penalty for violation, 31, 364.

STREET SURFACE RAILROADS—

- restrictions in constitution; consent of property owners, 212.
- certificate of incorporation, 2.
- contents thereof, 46.
- may condemn land, 7-8, 45-46.
- powers acquired, 46.
- may adopt certain motive power, 5.
- not to be organized under rapid transit act, 72.
- consent of property owners and local authorities, 46.
- value of property, how determined, 46.
- where line passes through or along parks, 46.
- consent of authorities, how procured, 46, 50.
- conditions attached thereto, 47, 51.
- franchise to be sold at public auction, 47, 51.
- right to construct branches, 47.
- who may bid for franchise, 48, 51.
- bond required of bidder, 48, 51.
- notice of times, place and terms of sale, 48, 52.
- comptroller may adjourn sale, 48, 52.
- resale of franchise, 49, 52.
- corporation to keep books, 49, 52.
- forfeiture on failure to pay rentals, 49, 52.
- when consents expire, 49, 52.
- surface roads south of Harlem river, act of 1884, ch. 252, 49.
- uniting two routes, 49, 52-53.
- connecting with ferry, 50, 53.
- condition upon which consent of authorities granted, 50, 52.
- reservations respecting Buffalo, 50.
- second track not to be erected on street, except, etc., 53, 59.
- when track of other corporation may be used, 53.
- compensation therefor, 53.
- proceedings if property owners do not consent, 54.
- application for commissioners, 54.
- publication of notice to property owners, 54.
- determination of commissioners, 55.
- compensation of commissioners, 55.
- percentage of gross receipts; when corporation shall pay, 55.
- how regulated in cities, 55.
- in incorporated city or village, 55.
- consolidation or lease of permitted only with consent of railroad commissioners, 43-44.

STREET SURFACE RAILROADS—Continued.

- in case of extension, 56.
- report of earnings, 56.
- forfeiture for refusal to pay, 56.
- extension over Hudson river bridges, 56.
- how consents obtained, 56.
- appointment of commissioners, 57.
- use of tracks of other corporations, 57.
- compensation, how adjusted, 57.
- repair of streets, 57.
- regulation of speed by ordinances, 57.
- removal of snow and ice from tracks, 57.
- repaving streets, 57.
- penalty for refusal, 57.
- within what time road to be built, 58.
- forfeiture of franchises, 58.
- motive power, 58.
- consent of railroad commissioners and property owners, 58.
- appointment of commissioners, 58.
- change of motive power, 58.
- change of roadbed or property, 58.
- fare, how regulated, 59, 47-49, 61.
- only one fare to be charged, 59.
- legislature may regulate fare, 59.
- construction of road in street where other road is built, 59.
 - crossing of other tracks, 59.
- extension over bridges, 59.
- connection with railroad or ferry, 59.
- compensation for use of bridges, 60.
- commissioners to determine compensation, 60.
- may guarantee bonds of other company on consent of stockholders, 60.
- abandonment of part of route by lessor or lessee, 60.
- ratification by stockholders, 60.
- approval of railroad commissioners, 60.
- declaration of, to be certified and endorsed, 60.
- contracting corporations to carry for one fare, 61.
- must furnish transfers, 61.
- penalty for refusal, 61.
- effect of dissolution of charter as to consents, 61.

STREET SURFACE RAILROADS—Continued.

- franchise may be sold, 61.
- corporate rights saved in case of failure to complete road, 62.
- right to operate branches, 62.
- conditions; former consents ratified; limitations, 62.
- when sand may be used on tracks, 63.
- construction upon public grounds and parks, 63.
- elevated roads not to be constructed over at grade, 72.
- piers of, not to rest upon tracks of street surface roads, 72.
- no street surface road to be constructed under elevated railway act, 72.
- intersection of, with elevated railroads, 72.
- obstruction of, by parades or processions, 216-217.
- turnpike and plank-road companies may lay rails, 254.
- removal of tracks of, during construction of elevated railroads, 72, 176-177.
- duty of corporation to restore same, 177.
- center bearing rails prohibited, 63, 64.
- right to cross substituted bridge, 64.
- consent of property owners, when must be obtained, 212.
- form of annual report of, 213-216.
- corporate existence and powers of certain, continued, 213.
- general provisions regarding extensions, 453.
- filing statement of streets proposed to be used, 453.
- consent of property owners and local authorities, 453.
- value of property, how determined, 454.
- provision regarding parks, 454.
- consent of local authorities; how procured, 454.
- application to be by notice, 454.
- conditions annexed to consents, 454.
- condition upon which consent shall be given; sale of franchise at auction, 455.
- construction of branches, 455.
- division of receipts, 455.
- bidder must be a corporation, 455.
- must file bond, 456.
- notice of sale, and of routes, 456.
- sale may be adjourned, 456.
- books to be kept by corporation, 456.
- forfeiture for failure to pay percentage of earnings, 457.
- consents, when to be forfeited, 457.

STREET SURFACE RAILROADS—Continued.

- duration of certain consents in New York, 457.
- release of obligations to municipalities, 457.
- union of street railways, 457-458.
- fares, how arranged, 458.
- when resale not to be made, 458.
- exceptions relating to Buffalo, 458.
- conditions annexed to consents, 458.
- prior proceedings confirmed, 458.
- within what time road to be built, 459.
- pendency of legal proceedings, 459.
- extension of time for completion of, in New York City, 459.
- must comply with certain provisions, 45-46.
 - to file statement of names, etc., of streets in which extension is proposed, 46.
 - powers thereupon acquired, 46.
- extension of, 47-48, 49-50, 55-57, 453-458.
 - rate of fare on extensions, 47.
- consent of local authorities, 47-53, 61-63.
 - how procured; conditions, 46-47.
 - termination of such consents, 49, 54-55.
- consent of property owners, 46.
- conditions upon which consent given, *et seq.*, 47-50.
- value of property, how ascertained, 46.
- where line passes public square, 46, 48.
 - sale of franchise at public auction, *et seq.*, 47-50.
 - purchaser must be a railroad corporation, 48.
 - security to be given, 48.
 - notice of sale, 48.
 - failure to pay rent or percentages, 49.
- connection between two lines, 49-50.
 - with ferry or depot, 50.
- intoxication or other misconduct of employees on, 363.
- other violation of duty by employees on, 365.
- injuries to property or tracks of, 388-389.
- overdriving an animal and failing to feed properly, 398.
- disorderly conduct on, 399-400.
- hours of labor upon, 209, 468.
- the same; exceptions, 468.
- penalty for violation of act, 209-210, 468.
- additional compensation, 468.

STREET SURFACE RAILROADS—Continued.

- weekly payment of wages on, 240, 466.
 - obligation extends to successors, 466.
 - penalty for violation, 240, 466.
 - duty of factory inspectors, 466–467.
 - penalties; how recovered, 240.
 - assignment of wages; when forbidden, 240–241, 466–467.
 - proceedings to enforce act, 241, 467.
- in New York City, 217.
 - use of salt on tracks; when permitted, 217.
 - processions not to interfere with, 217.
 - companies in New York must provide hose bridges, 217.
 - in streets and avenues, 218.
- in Brooklyn,
 - not to be built in Washington street, except, etc., 211.
- in Buffalo, 218.
 - rates of fare on, 219.
 - rates and additional rates of fare for children, 218.
 - certain companies must keep packages of tickets for sale on, 219–220.
 - rates upon transfer; exceptions, 220.
- prevention of accidents to children on, 270.
- in Buffalo, rates and additional rates for children on, 218.
- forbidden in parks in Buffalo, 219.
- rates of fare on, in Buffalo, 220.
- construction of road in street where other road is built, 459.
- consent of authorities, when necessary, 459.
- use of tracks of other railroads, 459.
- use of bridges by, 459.
- compensation therefor, 459.
- damages may be awarded for use of tracks, 460.
- one company may guarantee bonds of another, 460.

STREETS—See STREET RAILROADS.

- repair of, by street railroads, 57.
- penalty for refusal, 57.
- construction of road where other road is built, 459.
- authority to repair or repave, in whom vested, 64.
- obligations of railways to restore, *Notes*, 101.
- may be laid across railroads, 249.
- duty of corporation, 249.
- penalty for neglect, 250.

STREETS—See STREET RAILROADS.

street railroad companies may operate extensions and branches,
on, 465.

certificate to be filed, 465-466.

reservation, 466.

SUBPŒNAS—

issued by receivers, 306.

disobedience to, 307

by comptroller, 290.

penalty for failure to obey, 290-291.

duces tecum, when personal attendance of officer not required
by, 345.

SUMMONS—

service of on domestic corporation, 339.

id.; upon foreign corporation, 339.

when service may be made by publication, 340.

service of, in justices court, 341.

id.; special provisions in regard to railroad corporations, 341.

id.; relating to express companies, 341.

upon an information or presentment against a corporation,
403-404.

form of such summons, 404.

when and how served, 404.

SUPERINTENDENTS—

must report accidents to railroad commissioners, 78h.

duties of regarding milk cans, 264-265.

SUPERVISORS—

duties of regarding municipal bonds, 227.

construction of railroads in cities and counties, application to,
65.

duties of railroad commissioners of towns may be transferred
to, 234a, 234b.

tax on corporations, statement of to comptroller, 296h.

transmission by clerk, of statement of taxes to county treasurer,
282.

tax on capital, duties of as to, 296c, 283.

SUPPLEMENTAL CERTIFICATE—

names of directors may be supplied by, 3.

SUPPLEMENTAL PROCEEDINGS—

cases where this chapter is not applicable, 353.

what property cannot be reached, 353.

SUPREME COURT—See ACTIONS, CODE OF CIVIL PROCEDURE.

- power of respecting elections, 119.
- may stay proceedings in actions collusively brought, 119.
- may extend corporate existence, 121.
- may compel erection of crossings for logs in timbered lands, 20.
- may permit construction of railroad across highways, 10.
- may intercede when railroad commissioners refuse to certify as to necessity, etc., of future railroads, 35–36.
- confirmation by, of judgment of foreclosure and sale of consolidated railroads partly in another state, 41.
 - when such confirmation may be made in pending suits, 41.
 - effect of such confirmation, 41.
- may compel appropriation of money on application of rapid transit railroad commissioners, 163.
- may compel erection of fences, crossings, etc., 20.
 - railroads to keep flagman at highways, etc., 21.
- may enforce decision of railroad commissioners as to interchange of traffic, 22.
- may compel railroads to comply with recommendations of railroad commissioners, 78j.
- may fix expense of watchmen at railroad crossings, 23.
- notice of presentation of petition to, in proceedings to condemn lands, 192.
- application to for writ of assistance in condemnation proceedings, 197–198.
- appeals from orders of, 198–199.
- power to prevent disturbance of possession, 199–200.
- power of to make all necessary orders, in condemnation proceedings, 201.
- power of to make all necessary orders in proceedings for sale of corporate real property, 204.
- may punish for contempt, disobedience to subpoena of comptroller in adjustment of taxes on corporations, 291.
- appointment of commissioners by, 54.
- in proceedings to construct street railroad, 54.
- appointment by general term, 54.
 - by justice of, to examine proposed change of route of railroad, 6.
 - powers of justice, 6.
 - appeal to general term, 6–7.

SUPREME COURT—See ACTIONS, CODE OF CIVIL PROCEDURE
—Continued.

- may appoint commissioners to fix railroad crossing, 10.
- appointment by general term to determine whether tunnel railroad should be constructed, 14.
- the same; whether private railroads should be constructed, 17.
- street railroads, appointment of commissioners, 54.
 - extension of route over Hudson river, etc., 56-57.
 - change of motive power by, 58.
 - to determine whether road shall be constructed in street where other road is built, 59-60.
 - extension of time to complete roads, 58.
 - pendency of legal proceedings, 58.
 - application of provision to New York and large cities, 58.
 - extension over bridges, 59.
- power of to aid in collection of taxes, 291, 296i.
- railroads in cities and counties, 65-71.
 - application for commissioners, 65.
 - appointment of commissioners to determine necessity of, and route, 66, 78a.
 - confirmation of their report, 66.
 - upon proceedings to change route, 75-76.
 - consent of mayor or supervisors to presentation of petition to, 76.
 - may extend time within which such railroads required to act, 78a.
- condemnation law, 190.
 - petition to, 190.
 - appointment of commissioners, 194.
 - confirmation of report, 195-196.
 - final order, 196.
- appointment of commissioners on extension of rapid transit railroads, 176.
- proceedings for sale of corporate real property, 202-204.
 - petition to court, 202.
 - hearing of application, 203.
 - grant of application, 203.
 - court may make all necessary orders, 204.

SURVEY—

- railroad corporation may enter upon land for, 4.
- of proposed route, 36.

SWITCHES—

- interlocking, at railway crossings, 23.
- kind of switches regulated, 30.

TAXATION —

- of capital, 396a, 396b, 396f, 396g.
- of joint stock companies, 296a, 296g.
- computation of, 286-287, 289.
- cases of capital employed in this state, 289, 291.
- collection of, 285-286, 288, 296f.
- railroad taxes, payment of to county treasurer, 283, 234a.
 - disposition thereof, 234a.
- when comptroller may fix tax and penalties, 289-290, 291-292.
- of elevated railroads, 287, 296a.
- of tunnel railroads, 296a.
- compensation to informer, 295.
- to pay revenue bonds issued under rapid transit act, 163.
- deduction for real estate, 296g, 296c.
- report to comptroller, 282, 284, 286.
 - failure to report to, 285, 289.
- of corporations, 287.
 - railroads, canals, ferries, 287.
 - express, pipe-line, navigation or transportation, 287.
 - steamboat, telegraph, telephone, 287
 - palace car or sleeping cars, 287.
 - rapid transit railroads, 168.
- foreign corporations, 287-288, 289.
- manufacturing and other corporations exempt, 286.
- assessment of property of consolidated railroad companies, 40.
- rapid transit corporations, 168.
- expenses of railroad commissioners to be assessed upon railroads, 78m.
- payment of school taxes by railroads, 279.
 - school collector to deliver statement to county treasurer, 279
 - duty of county treasurer, 279.
 - when tax may be paid with one per cent. fees, 280.
 - duty of collector if tax not paid in thirty days, 280.

TAXATION—Continued.

- limitation, 280.
- tax to be placed to credit of school district, 280.
- payment on demand, 280.
- fees of collector, 280.
- tax may be paid to collector direct, 280.
- value of railroad property in school districts, 280–281.
 - how apportioned, 281.
 - duty of town assessors, 281.
 - apportionment, 281.
 - when assessors neglect to make apportionment, 281.
 - town clerk to furnish certified statement when requested, 281.
 - when alteration is made in school district, 281.
- place of assessment of certain personal property, 282.
- payment of commutation for highway labor, 282.
 - how effected, 282.
 - money, how applied, 282.
 - provision not applicable to incorporated villages, etc., 282.
- payment of taxes by railroad companies, 282.
 - statement to be delivered to county treasurer, 282–283.
 - payment to county treasurer, 283.
 - fees of treasurer, 283.
 - collector to be notified of non-payment of tax, 283.
 - duty of collector, 283.
 - county treasurer to credit taxes, 283.
 - collector to be credited with fees, 283.
 - surplus to be paid to supervisor, 283.
 - company may pay tax to collector; proviso, 283–284.
- general act for taxation of corporations, 284.
 - company to make annual report to comptroller, 284.
 - where dividend not declared, stock to be estimated and declared, 284–285.
 - certificate to be sent comptroller, 284–285.
 - valuation of stock by comptroller, 285.
 - appeals, 285.
 - railroad companies subject to, 296a.
 - definition of word “land,” 296b.
 - of “personal estate,” 296c.
 - of capital stock of corporations, 296c.
 - what property is liable to, 296c.

TAXATION—Continued.

- stock not taxed against individual owners, 296d.
- where real estate of corporations is assessable, 296d.
- the same ; personal estate, 296d.
- property ; how estimated and assessed, 296e.
- certain sections of tax law repealed, 296e.
- general provisions as to assessment and collection, 296e.
 - corporations liable to, 296e.
 - to deliver statements to assessors, 296e.
 - contents of such statements, 296f.
 - to deliver statements to comptroller, 296f.
 - penalty for neglect, 296f.
 - suits therefor, 296f.
 - corporations, how assessed, 296g.
 - how property to be entered upon rolls, 296g.
 - certain provisions extended, 296g.
 - taxes to be stated and collected, 296g.
 - duty of supervisors, 296h.
 - duty of collector, 296h.
 - taxes, how paid, 296h.
 - proceedings on default of payment, 296i.
 - county treasurer to be credited with amount returned unpaid, 296i.
 - attorney-general to file petition, 296i.
 - powers of supreme court thereon, 296i.
 - further penalty, 296i.
- highway taxes, 296i.
 - commutation of, 296i.
 - comptroller to add ten per cent in case of failure to make report ; proviso, 285–286, 289.
 - annual tax, how computed, 286.
 - when payable, 287.
 - tax on railroad, steamboat and other companies, 287.
 - rate of tax, 287.
 - when payable, 288.
 - report of gross earnings, 288.
 - report for six months, etc., 288.
 - ten per cent. to added in case of neglect, 285, 288.
 - proceedings by attorney-general, 285.
 - forfeiture of charter, 286.
 - exempt from taxation for state purposes ; proviso, 288.

TAXATION—Continued.

- application of tax, 288.
- saving clause, 289.
- amount of capital stock employed in this state to be basis of tax, 289.
- if dissatisfied, comptroller may fix amount, 289.
- comptroller may examine books in case of failure to report, 289-290.
- comptroller may issue subpoenas, and examine witnesses, 290.
- penalty for failure to obey subpoena, 290-291.
- comptroller to settle and adjust accounts, when, 291.
- proviso as to certain payments, 291-292.
- interest on accounts, 292.
- comptroller to give notice before making settlement of taxes, 292.
- provision in relation to review by comptroller, 292.
- determination by writ of certiorari, 292-293.
- comptroller may issue warrant for collection after thirty days, 293.
- readjustment of accounts in cases of illegal payment of taxes, 294.
- comptroller's action may be reviewed by certiorari, 294.
- appeals from determination, 294-295.
- recovery of taxes from delinquent corporations, 294.
- prosecution of taxes from delinquent corporations, 294.
- taxation of corporations upon organization, 110, 166, 295.
 - state tax on capital stock, 295.
 - applicable to general fund, 296.
 - upon reorganization, 295.
- unpaid taxes on vacant lands, 296j.
 - taxes on lands of residents and railroads returned as unpaid, 296j.
 - form of description of such, 296j.
 - collection of, 296k.
 - levy by distress and sale on default, 296k.
- taxes on telegraph lines, 296k.
 - place of assessment of, etc., 296k.
 - "lines" defined, 296l.
 - enforcing collection of such tax, 286l.
 - what property included, 296l.

TAXATION—Continued.

- remedy on default, 296l.
- clerk of board of supervisors to furnish statement to county treasurer, 296l.
- companies may pay tax to county treasurer, 296l.
- fees thereon, 296l.
- proceedings where tax not paid, 296m.
- limitations, 296m.
- placing electrical conductors underground, 296m.
- assessment and collection of expenses of, 296m.
- salary and expenses of commissioners; how assessed, 296m.
- companies to pay *pro rata* share, 296m.
- companies to furnish comptroller data for apportionment of salaries and expenses, 296m, 296n.
- penalty for refusal, 296n.
- proceedings upon default of payment, 296n.
 - comptroller may issue warrant to sheriff, 296n.
 - levy and sale of corporate property, 296n.
 - lien of such warrants, 296n.
- title of corporations, 296o.
 - statement of railroad, telegraph, telephone and electric light taxes, 296o.
- review of assessment by *certiorari*, 296o.
- application to reduce valuation, 296p.
- taxable transfers, 296p.
 - when levied, 296p.
 - transfers by will or intestate laws, 296q.
 - where decedent a non-resident, 296q.
 - transfers by deed, sale or gift in contemplation of death, 296q.
 - assessment against party beneficially interested, 296q.
 - rate of tax, 296q.
 - deferred payments, 296q.
 - bond to be given in such cases, 296q.
 - liability of certain corporations to tax, 296q.
 - duty of safe deposit companies, 296r.
 - officers may examine securities, 286r.
 - definitions under this act, 296r.
 - "estate"; "property," 296r.
 - "transfer"; 296r.

TAXATION—Continued.

“lines” defined, 296l.

“county treasurer,” 296r.

“district attorney,” 296r.

citations to certain laws on taxation, 296r.

TABLES—

showing what laws the general railroad act is based upon, 85.

the general corporation act, 108.

the stock corporation act, 116. See Tables at beginning of work.

TELEGRAPH—

may be maintained and operated by railroads in foreign countries, 15-16.

injury to, 391, 392.

dispatch; divulging contents of, 401.

TERMINAL FACILITIES —

railroad commissioners may recommend increase of, 78i.

TERMINUS —

statement of, in certificate of incorporation, 2.

change of, 11-12.

only to adjoining county, 11.

consent of tax payers where municipal aid bonds issued, 11.

consent of municipal authorities, 11.

to intersect with other railroad, 11.

THISTLES —

to be cut between certain dates, 32.

penalty for refusal, 32.

TICKETS — See **FARES**, **PASSENGERS**.

sales by unauthorized agents restricted, 376.

unauthorized persons forbidden to sell certificates, receipts, etc., to procure tickets, 376.

conspiracy to sell in violation of law, 377.

conspirators may be indicted, though object not accomplished, 377.

offices for unlawful sale of, disorderly houses, 377.

owners, pursers, etc., allowed to sell tickets, 377.

station masters, conductors, etc., allowed to sell tickets, 378.

what must be stated in, 378.

sale of tickets not properly filled out, a misdemeanor, 378.

sales of at excessive rates, 261, 378.

TICKETS—See **FARES, PASSENGERS**—Continued.

completed unissued instruments, property, 379.

value of, how ascertained, 379.

forgery of, 382.

officers of corporation selling, etc., 382.

sleeping car; how indorsed, 261.

rights and obligations of passengers, *Notes*, 103.

rebate for extra fare paid on train, 241.

sale of, at stations half an hour before starting, 242.

to immigrants, 256.

 how indorsed, 256.

 sale of, in New York city, 258.

 penalty, 260.

must be furnished over connecting lines, 22.

to be furnished for connecting steamboats; 28.

penalty for refusing to furnish ticket, 28.

in sleeping and drawing room cars, 25.

persons collecting must wear badges, 26, 173.

TIMBERED AND FOREST LANDS—See **FOREST LANDS**.

prevention of fires in, 246, 469-470.

railroads through, 250-252.

crossings in, for transportation of logs, 20.

TOOLS—

in passenger cars, 30.

TOWN OFFICER—

may permit railroads to cross public lands, 9.

TRACKS—See **ROADWAY**.

persons other than employees not permitted to walk along, 32.

not to be obstructed by processions or parades, 216.

notice to be given of certain processions, parades, etc., 216.

penalty for violation of provision, 217.

use of salt on, when permitted, 217.

injuries to, 389.

use of by other roads, 459.

damages for use of, 460.

TRAINS—

must be run at regular times fixed by public notice, 21.

sufficient accommodations must be furnished, 21.

no preferences for transaction of business, 22.

railroad commissioners may determine precedence at crossings, 23.

TRAINS—Continued.

- must stop at grade crossings, 23.
- stop may be dispensed with; when, 23.
- no stops required at station yards, etc., 23.
- on rapid transit roads to be run on regular schedule, 174.
- freight, riding on, 365.

TRUSTEES—

- persons holding stock as; when liable, 138n.
- conversion by; larceny, 370.
- how punished, 370.

TUNNELS—

- railroad commissioners may compel lighting and ventilation of, 243.
- board to determine manner of work, 243.
- notice to be served on corporation requiring work to be done, 243.
- duty of corporation thereupon, 244.
- in case of default, *mandamus* may be applied for, 244.
- penalty for neglect, 244.
- district attorney to enter judgment after indictment for default, 244–245.
- requirements in large cities, 245.
- lighting of, 243.

TURNPIKES—See HIGHWAYS, PLANK ROADS.**TUNNEL RAILROADS—**

- corporation may acquire lands, 450.
- may excavate underground, 450.
- consents of property owners and authorities, 451.
- appointment of commissioners, 451.
- erection of union stations, 451.
- liability of corporation, 451.
- interference with sub-ways, 451.
- public use of property, 451.
- parks exempted, 452–453.
- limitations regarding Brooklyn and East and North Rivers, 452.
- lands may be taken for tunnel or bridge, 13.
- not to be on or along canals, 13.
- surface must be made secure for buildings, 13.
- consent of property owners in cities and villages, 13.
- consent of municipal authorities, 13–14.

TUNNEL RAILROADS—Continued.

- in case of dispute, commissioners to be appointed, 14.
- connecting or intersecting roads, 14.
- liability for damages, 14.
- interference with sub-way pipes, 14.
- in public parks or squares, 14.
- not applicable to Kings county, 15.
- consolidation with other railroads, 36-37.
- connecting roads to have equal rights of transit through tunnel, 37.
- taxation of, 287, 296e.

TRADE MARKS—

- offenses against, 384.

TRAMPS—

- provisions regarding, 267.

UNIFORMS—

- inducing officer, etc., to leave employment because uniforms required, 365.
- unlawful wearing of, 365.

UNION RAILWAY STATIONS—

- railroad corporations may acquire stock in corporations organized to construct, 5.

UNITED STATES—

- title to certain lands not affected by railroad privileges, 252.
- elevated roads not to be built on lands of, 155.

VERIFICATION—

- how and by whom made, 348.

VESSEL—

- altering signal light for, 386.
- overloading passenger, 385, 394.
- fitting out with intent to wreck, 385.
- fires and lights on in certain cases, 386.
- masters to suppress gambling on, 386.
- violation of quarantine laws by, 386.
- unlicensed piloting, 388.
- coasting steamers excepted, 388.
- master of bringing foreign convict, 384.

VOLUNTARY DISSOLUTION OF CORPORATION—

- when majority of directors, etc., may petition for, 334.
- id.; when they are equally divided, 334.
- contents of petition, 334.

VOLUNTARY DISSOLUTION OF CORPORATION — Continued.

- affidavits to be annexed, 335.
- presentation of petition, etc., order to show cause, 335.
- order to be published, 336.
- id.; to be served on creditors and stockholders, 337.
- hearing, 337.
- id.; original papers may be used, 337.
- application for final order, 337.
- final order, 338.
- certain sales, etc., void, 338.
- certain corporations exempt from this title, 338.

VOTING —

- stock of municipal corporations, how represented, 40.

WAGES —

- to be paid weekly, 466.
- obligation extends to successors, 466.
- penalty for neglect, 466.
- duty of factory inspectors, 467.
- assignment of wages, 467.
- application of act, 467.

WATER —

- for passenger cars, 31, 72, 172.

WATER PIPES —

- interference with, by constructing railroad, 14.

WEIGHT OF RAIL —

- steam railroads, 19.

WINTER —

- certain roads may cease operations, 18.
- the same, roads transporting ore and summer tourists, 33.

WHIRLPOOL BRIDGE COMPANY —

- power to take and hold real estate, 407.
- to have same powers as railroad corporations in certain matters, 407.
- to possess general powers, etc., prescribed in act authorizing consolidation of certain railroad companies, 408.

WRECKED GOODS —

- keeping, a misdemeanor, 384.

ADDENDA.

CONTAINING LAWS ENACTED BY THE LEGISLATURE OF 1894.

A. THE RAILROAD LAW.

- § 1. Electric light and power corporations.
- § 2. Construction and operation of street surface railroads.
- § 3. Construction of railroads in streets.
- § 4. Railway appliances.

B. GENERAL AND STOCK CORPORATION LAWS.

- § 5. Limitations upon amount of property.
- § 6. Foreign corporations.
- § 7. Capital stock.

C. STATUTORY CONSTRUCTION LAW.

- § 8. Definitions.
- § 9. Rule of construction.

D. TAXATION.

- § 10. Of capital stock.
- § 11. On organization (amendment of 1892).

E. CODE OF CIVIL PROCEDURE.

- § 12. Change of name.
- § 13. Voluntary dissolution of corporations.
- § 14. The same ; procedure.
- § 15. Condemnation proceedings.

A. THE RAILROAD LAW.

- § 1. ELECTRIC LIGHT AND POWER CORPORATION. LAWS OF 1890, CHAPTER 565, AS AMENDED BY LAWS OF 1892, CHAPTER 676, AND LAWS OF 1894, CHAPTER 648.

§ 21. When an electric light and power corporation may become a railroad corporation.—When all the stockholders of any domestic electric light and power company incorporated under a general law, having not less than five stockholders, and actually carrying on business in this state, shall execute and file in the offices in which it* original certificates of incorporation are filed an amended certificate of incorporation, complying in every other respect than as to the number of signers and directors, who shall be not less than five, with the provisions of the railway law, and in

* So in the original.

which certificate the corporate name of such corporation shall be amended by adding before the word "company," in its corporate name, the words "and railroad," or the words "railroad and land," such corporation shall have the right to build, maintain and operate by electricity, as a motive power, a railroad not exceeding twenty miles in length and within that distance from the power station and not to exceed four miles in length in any city, and such corporation shall otherwise be subject to all the provisions of this chapter and have all the powers, rights and privileges conferred by it upon railroad corporations, provided that no such corporation shall construct any railroad which is in whole or in part a street surface railroad, without complying with the provisions of article four of this chapter. Upon filing such certificate such corporation shall also have the right to acquire by gift or voluntary purchase and sale land not exceeding two thousand acres, along the line or contiguous to said railroad and to hold, improve, lease and sell the same.

§ 2. CONSTRUCTION AND OPERATION OF STREET SURFACE RAILROADS. LAWS OF 1890, CHAPTER 565, AS AMENDED BY LAWS OF 1894, CHAPTER 723.

§ 91. Consent of property owners and local authorities.—

A street surface railroad, or extensions or branches thereof, shall not be built, extended or operated unless the consent in writing, acknowledged or proved as are deeds entitled to be recorded, of the owners of one-half in value of the property bounded on, and also the consent of the local authorities having control of that portion of a street or highway upon which it is proposed to build or operate such railroad shall have been first obtained. Consents of property owners heretofore obtained to the building, extending, operating or change of motive power shall be effectual for the purposes therein mentioned and be deemed to be sufficiently proved and shall be entitled to be recorded, whenever such consents shall have been signed, executed or acknowledged before an officer authorized by law to take acknowledgements of deeds, or before or in the presence of a subscribing witness, and without regard to whether or not the subscribing witness shall have affixed his signature in the presence of the subscriber, provided that the proof of such signing, execution or acknowledgement shall have been made by such subscribing witness in the manner prescribed by chapter three, part two of the revised statutes. In cities the common council, acting subject to the power now possessed by the

•

mayor to veto ordinances; in villages the board of trustees, and in towns the commissioner or commissioners of highways shall be the local authorities referred to; if in any city, the exclusive control of any street, avenue or other property, which is to be used or occupied by any such railroad, is vested in any other authority, the consent of such authority shall also be first obtained. The value of the property above specified shall be ascertained and determined by the assessment-roll of the city, village or town in which it is situated, completed last before the local authorities shall have given their consent, except property owned by such city, village or town, or by the state of New York, or the United States of America, the value of which shall be ascertained and determined by making the value thereof to be the same as is shown by such assessment-roll to be the value of the equivalent in size and frontage of the adjacent property on the same street or highway; and the consent of the local authorities shall operate as the consent of such city, village or town as the owners of such property.

§ 3. CONSTRUCTION OF RAILROADS IN STREETS. LAWS OF 1890, CHAPTER 565, AS AMENDED BY LAWS OF 1893, CHAPTER 434, AND LAWS OF 1894, CHAPTER 693.

§ 102. Construction of road in street where other road is built.—No street surface railroad corporation shall construct, extend or operate its road or tracks in that portion of any street, avenue, road or highway, in which a street surface railroad is or shall be lawfully constructed, except for necessary crossings, or, in cities, villages and town of less than one million two hundred and fifty thousand inhabitants over any bridges, without first obtaining the consent of the corporation owning and maintaining the same, except that any street surface railroad company may use the tracks of another street surface railroad company for a distance not exceeding one thousand feet, and if in a city having a population of not less than thirty-five thousand inhabitants, except Long Island City, for a distance not exceeding fifteen hundred feet, and in cities, villages and towns of less than one million two hundred and fifty thousand inhabitants, shall have the right to lay its tracks upon, and run over and use any bridges used wholly or in part as a foot-bridge, whenever the court upon an application for commissioners shall be satisfied that such use is actually necessary to connect main portions of a line to be constructed or operated as an independent railroad, or to connect said railroad with a ferry,

or with another existing railroad, and that the public convenience requires the same, in which event the right to use shall only be given for a compensation to an extent and in a manner to be ascertained and determined by commissioners to be appointed by the courts as is provided in the condemnation law, or by the board of railroad commissioners in cases where the corporations interested shall unite in a request for such board to act. Such commissioners in determining the compensation to be paid for the use by one corporation of the tracks of another shall consider and allow for the use of the tracks for all injury and damage to the corporation whose tracks may be so used. Any street surface railroad corporation may, in pursuance of a unanimous vote of the stockholders voting at a special meeting called for that purpose by notice in writing, signed by a majority of the directors of such corporation, stating the time, place and object of the meeting, and serving upon each stockholder appearing as such upon the books of the corporation, personally or by mail, at his last known post-office address, at least sixty days prior to such meeting, guarantee the bonds of any other street surface railroad corporation whose road is fully or partly in the same city or town or adjacent cities or towns.

§ 4. RAILWAY APPLIANCES. ADDED TO RAILROAD LAW BY
LAWS OF 1894, CHAPTER 452.

§ 172. **Railroad Commissioners may act as judges, etc.**—The railroad commissioners may in their discretion act as judges to award prizes which may be offered by any responsible person for improvements in machinery or appliances for operating railroads.

B. GENERAL AND STOCK CORPORATION LAWS.

§ 5. LIMITATIONS UPON AMOUNT OF PROPERTY. LAWS OF 1890,
CHAPTER 563, AS AMENDED BY LAWS OF 1894, CHAPTER 400.

§ 12. **Enlargement of limitations upon the amount of the property of non-stock corporations.**—If any general or special law heretofore passed, or any certificate of incorporation, shall limit the amount of property a corporation other than a stock corporation may take or hold, such corporation may take and hold property of the value of three million dollars or less, or the yearly income derived from which shall be five hundred thousand dollars or less, notwithstanding any such limitations. In computing the value of such property, no increase in value arising otherwise than from improvements made thereon shall be taken into account.

§ 6. FOREIGN CORPORATIONS. LAWS OF 1890, CHAPTER 563, AS AMENDED BY LAWS OF 1892, CHAPTER 687, AND LAWS OF 1894, CHAPTER 136.

§ 18. Acquisition by foreign corporation of real property in this state.—Any foreign corporation may purchase at a sale upon the foreclosure of any mortgage held by it, or, upon any judgment or decree for debts due it, or, upon any settlement to secure such debts, any real property within this state covered by or subject to such mortgage, judgment, decree or settlement, and may take by devise any real property situated within this state and hold the same for not exceeding five years from the date of such purchase, or from the time when the right to the possession thereof vests in such devisee, and convey it by deed or otherwise in the same manner as a domestic corporation.

§ 7. CAPITAL STOCK. LAWS OF 1890, CHAPTER 564, AS AMENDED BY LAWS OF 1892, CHAPTER 688, AND LAWS OF 1894, CHAPTER 346.

§ 44. Increase or reduction of capital stock.—Any domestic corporation may increase or reduce its capital stock in the manner herein provided, but not above the maximum or below the minimum, if any, prescribed by law. If increased, the holders of the additional stock issued shall be subject to the same liabilities with respect thereto as are provided by law in relation to the original capital; if reduced, the amount of its debts and liabilities shall not exceed the amount of its reduced capital, unless an insurance corporation, in which case the amount of its debts and liabilities shall not exceed the amount of its reduced capital and other assets. The owner of any stock shall not be relieved from any liability existing prior to the reduction of the capital stock of any stock corporation. If a banking corporation, whether the capital be increased or reduced, its assets shall at least be equal to its debts and liabilities and the capital stock, as increased or reduced.

C. STATUTORY CONSTRUCTION LAW.

§ 8. DEFINITIONS. LAWS OF 1892, CHAPTER 677, AS AMENDED BY LAWS OF 1894, CHAPTER 447.

§ 27. Days; mode of computing days; night-time.—A calendar day includes the time from midnight to midnight. Sunday or any day of the week specifically mentioned means a calendar day. A number of days specified as a period from a cer-

tain day within which or after or before which an act is authorized or required to be done means such number of calendar days exclusive of the calendar day from which the reckoning is made. Sunday or a public holiday, other than a half-holiday, must be excluded from the reckoning if it is the last day of any such period, or if it is an intervening day of any such period of two days. In computing any specified number of days, weeks or months from a specified event, the day upon which the event happens is deemed the day from which the reckoning is made. The day from which any specified number of days, weeks or months of time is reckoned shall be excluded in making the reckoning. Night-time includes the time from sunset to sunrise.

§ 9. RULE OF CONSTRUCTION. LAWS OF 1892, CHAPTER 677, AS AMENDED BY LAWS OF 1894, CHAPTER 448.

§ 32. **Effect of repeal and re-enactment** — The provisions of a law repealing a prior law, which are substantial re-enactments of provisions of the prior law, shall be construed as a continuation of such provisions of such prior law, and not as new enactments. If any provision of a law be repealed and, in substance, re-enacted, a reference in any law to such repealed provision shall be deemed a reference to such re-enacted provision.

D. TAXATION.

§ 10. OF CAPITAL STOCK. LAWS OF 1880, CHAPTER 542, AS AMENDED BY LAWS OF 1881, CHAPTER 361, LAWS OF 1882, CHAPTER 151, LAWS OF 1885, CHAPTER 501, AND LAWS OF 1894, CHAPTER 562.

§ 11. **Basis of assessment.** — The amount of capital stock which shall be the basis for tax under the provisions of section three of this act, in the case of every corporation, joint-stock company and association liable to taxation thereunder, shall be the amount of capital stock employed within this state. In making to the comptroller the report in writing or certificate of estimate and appraisal of the capital stock of such corporation, joint-stock company or association, provided for by the first section of this act, it shall be the duty of the president or treasurer thereof, as the case may be, to state, specifically, the amount of capital stock employed within this state of such corporation, joint-stock company or association. Whenever the comptroller is dissatisfied with such report or certificate of estimate and appraisal, as the case may be, of any

corporation, joint-stock company or association, whose capital is only partially employed within this state, he is authorized and empowered to ascertain, fix and determine the amount of capital employed within this state, and so settle an account for the taxes and penalties due the state thereon. The gross earnings in this state, which shall be the basis of taxation, under the provisions of section six of this act, shall be the gross earnings derived from business originating and terminating within this state, and shall in no event include earnings derived from business which is of an interstate character, and all settlements for such taxes heretofore based by the comptroller upon gross earnings, excluding earnings from interstate business, are hereby ratified and confirmed, except that the accounts for taxation under section six of this act for the years eighteen hundred and ninety-two and eighteen hundred and ninety-three shall be settled and adjusted by the comptroller by excluding the earnings of an interstate character as herein provided.

§ 11. TAXATION OF CORPORATIONS ON ORGANIZATION. LAWS OF 1886, CHAPTER 143, AS AMENDED BY LAWS OF 1887, CHAPTER 284, AND LAWS OF 1892, CHAPTER 668.

§ 1. Every corporation, joint-stock company or association, incorporated by or under any general or special law of this state, having capital stock divided into shares, shall pay to the state treasurer for the use of the state a tax of one-eighth of one per centum upon the amount of the capital stock which said corporation, joint-stock company or association, is authorized to have, and a like tax on any subsequent increase thereof; the said tax shall be due and payable upon the incorporation of said corporation, joint-stock company or association, or upon the increase of the capital thereof, and no such corporation, joint-stock company or association, shall have or exercise any corporate powers until the said tax shall have been paid, and the secretary of state and any county clerk shall not file any certificate of incorporation, or articles of association, or certify or give any certificate to any such corporation, joint-stock company or association, until he is satisfied that the said tax has been paid to the state treasurer; and no such company incorporated by any special act of the legislature shall go into operation, or exercise any corporate powers or privileges until said tax has been paid as aforesaid. But this act shall not apply to a literary, scientific, medical or religious corporation or corporations, organized under the banking laws of this state, or

under chapter 122 of the Laws of 1851, entitled "An act for incorporation of building, mutual loan accumulating fund association, and the acts amendatory thereof." In case of the consolidation of two corporations into a new corporation, said new corporation shall be required to pay the tax hereinbefore provided for, only upon the amount of its capital stock in excess of the aggregate amount of the capital stock of said two corporations.

E. CODE OF CIVIL PROCEDURE.

§ 12. CHANGE OF NAME. CODE OF CIVIL PROCEDURE AS AMENDED BY LAWS OF 1894, CHAPTER 264.

§ 2413. Notice of presentation of petition.—If the petition be to change the name of an infant, and is made by the infant's next friend, notice of the time and place at which the petition will be presented must be served upon the father, or if he is dead or can not be found, upon the mother, or if both are dead or can not be found, upon the general guardian or guardian of the person of the infant, in like manner as a notice of a motion upon an attorney in an action, unless it appears to the satisfaction of the court that the infant has no father or mother, or that both reside without the state or can not be found, and that he has no guardian residing within this state, in which case the court may dispense with notice or require notice to be given to such persons and in such manner as the court thinks proper. If the petition be made by a corporation located elsewhere than in the city and county of New York, notice of the presentation thereof shall be published once in each week for six successive weeks in the state paper (at Albany in which notices by state officers are authorized by law to be published), and in a newspaper of every county in which such corporation shall have a business office, or if it has no business office, of the county in which its principal corporate property is situated or in which its operations are or theretofore have been principally conducted, which newspaper, if it be a banking corporation, shall be designated by the superintendent of banks, if any insurance corporation, by the superintendent of insurance, or if a railroad corporation, by the railroad commissioners. In the city and county of New York such notice shall be published once in each week for six successive weeks in two daily newspapers published in such county.

§ 2415. When change to take effect.—If the order shall be fully complied with, and within forty days after the making of

the order, an affidavit of the publication thereof shall be filed and recorded in the office in which the order is entered, and in each office in which certified copies thereof are required to be filed, if any, the petitioner shall, on and after the day specified for that purpose in the order, be known by the name which is thereby authorized to be assumed, and by no other name. No proceedings heretofore had under sections two thousand four hundred and fourteen and two thousand four hundred and fifteen of the code of civil procedure for the change of the name of a corporation, shall be invalid by reason of the non-filing of an affidavit of the publication of the order changing such name within twenty days from the date thereof.

§ 13. VOLUNTARY DISSOLUTION OF CORPORATIONS, CODE OF CIVIL PROCEDURE, AS AMENDED BY LAWS OF 1894, CHAPTER 304.

§ 2420. **Where directors are evenly divided.**—If a corporation, created under a general statute of the state for the formation of corporations, has an even number of trustees or directors, who are equally divided respecting the management of its affairs, and the entire stock of the corporation is, at that time, owned by the trustees, or directors, or is so divided, that one-half thereof is owned or controlled by persons favoring the course of one-half of the trustees or directors, and one-half by persons favoring the course of the other half of them, the trustees or directors, or one or more of them, may present a petition as prescribed in the last section. And it shall be the duty of a majority of the directors or trustees of every corporation created by or under the laws of this state to present a petition as prescribed in the last section whenever directed so to do by a majority in interest of its stockholders. But this section does not apply to a savings bank, a trust company, a safe deposit company, or a corporation formed to rent safes in burglar and fire-proof vaults, or for the construction or operation of a railroad, or for aiding in the construction thereof, or for carrying on the business of banking or insurance, or intended to derive a profit from the loan or use of money.

§ 14. THE SAME; PROCEDURE. CODE OF CIVIL PROCEDURE, AS AMENDED BY LAWS OF 1894, CHAPTER 258.

§ 2427. **Hearing; original papers may be used.**—The court or the referee is entitled to use, upon the hearing, the origi-

nal petition, and the schedules annexed thereto; and the clerk must transmit them accordingly, upon the written order of the judge, or of the referee. In that case, they must be returned with the decision or report. The court may, at any stage of the proceedings before final order, on the application of the petitioners, or a majority of them, or on the application of the temporary receiver, grant an order amending the schedules annexed to the original petition, by the insertion of additional items, or by making the statements or inventory fuller and in greater detail than as originally filed, with the like effect as though said petition and schedules had been originally presented and filed as amended.

§ 15. CONDEMNATION PROCEEDINGS. CODE OF CIVIL PROCEDURE,
AS AMENDED BY LAWS OF 1894, CHAPTER 475.

§ 3374. **Abandonment and discontinuance of proceeding.** — Upon the application of the plaintiff to be made at any time after the presentation of the petition and before the expiration of thirty days after the entry of the final order, upon eight days' notice of motion to all other parties to the proceeding who have appeared therein or upon an order to show cause, the court may, in its discretion, and for good cause shown, authorize and direct the abandonment and discontinuance of the proceeding, upon payment of the fees and expenses, if any, of the commissioners, and the costs and expenses directed to be paid in such final order, if such final order shall have been entered, and upon such other terms and conditions as the court may prescribe; and upon the entry of the order granting such application and upon compliance with the terms and conditions therein prescribed, payment of the amount awarded for compensation, if such compensation shall have been theretofore awarded, shall not be enforced, but in such case, if such abandonment and discontinuance of the proceeding be directed upon the application of the plaintiff, the order granting such application, if permitting a renewal of such proceedings, shall provide that proceedings to acquire title to such lands or any part thereof shall not be renewed by the plaintiff without a tender or deposit in court of the amount of the award and interest thereon.

ERRATA.

1. The Tables in the body of the work showing what laws the general revision acts are based upon are superseded by similar Tables at the beginning of the work.

2. The Notes at pp. 279, 297, under *Taxation* and *Receivers* should be eliminated. This is a complete work entirely independent of Colby's book, and the chapters on Taxation and Receivers contain all laws regarding these subjects which are applicable to corporations.

3. At p. 237, § 40, read "Change of Gauge" for "Change of Grade."

4. At p. 271 read "1882" instead of "1862."

